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# TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

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No. 383

GUY T. HELVERING, COMMISSIONER OF INTERNAL  
REVENUE, PETITIONER

vs.

GEORGE B. CLIFFORD, JR.

---

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE EIGHTH CIRCUIT

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PETITION FOR CERTIORARI FILED SEPTEMBER 13, 1939  
CERTIORARI GRANTED NOVEMBER 6, 1939

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A [Caption omitted.]

1 Before United States Board of Tax Appeals

Docket No. 89054

GEORGE B. CLIFFORD, JR., PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

*Docket entries*

Appearances: For Taxpayer: Thomas P. Helme, Esq. For  
Comm'r.: W. Frank Gibbs, Esq.,

1937

May 13—Petition received and filed. Taxpayer notified. (Fee  
paid.)

May 13—Copy of petition served on General Counsel.

Jul. 9—Answer filed by General Counsel.

Jul. 13—Copy of answer served on taxpayer.

Jul. 19—Motion for circuit hearing at St. Paul, Minn., filed by  
taxpayer. 7/20/37 granted.

1938

Apr. 15—Hearing set June 20, 1938, at St. Paul.

Jun. 20—Hearing had before Mr. Oppen on merits. Submitted.  
Stipulation as to the facts filed. Petitioner's brief due  
7/20/38—respondent's due 8/20/38—reply due 9/6/38.

Jul. 18—Brief filed by taxpayer. 7/18/38 copy served on General  
Counsel.

Jul. 25—Transcript of hearing of June 20, 1938, filed.

Aug. 19—Brief filed by General Counsel.

2 Sep. 3—Reply brief filed by taxpayer. 9/6/38 copy  
served

Sep. 26—Memorandum opinion rendered, Mr. Oppen, Div. 14.  
Decision will be entered for the respondent.

Sep. 27—Decision entered, Clarence V. Oppen, Div. 14.

Oct. 24—Motion for review by full Board and, if that be not  
granted, for reconsideration filed by taxpayer.

Oct. 25—Order denying review by the full Board and recon-  
sideration entered.

Dec. 19—Supersedeas bond in the amount of \$6,000.00 approved  
and ordered filed.

Dec. 20—Petition for review by U. S. Circuit Court of Appeals (8)  
with assignments of error filed by taxpayer.

Dec. 20—Proof of service filed by taxpayer.

1939

Jan. 16—Agreed statement of evidence lodged.

Jan. 16—Agreed praecipe for record with proof of service thereon  
filed.

Jan. 31—Agreed statement of evidence approved and ordered  
filed.



## Before United States Board of Tax Appeals

[Title omitted.]

*Petition of George B. Clifford, Jr., for appeal*

(Filed May 13, 1937)

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, IT: D: 2, FDT: 90D, dated February 15, 1937, and as basis for this proceeding alleges as follows:

3 1. The petitioner is an individual with his residence at 2601 E. Lake of Isles Boulevard, Minneapolis, Minnesota.

2. The notice of deficiency, a copy of which is attached and marked "Exhibit A," was mailed to the petitioner on February 15, 1937, as the petitioner believes.

3. The taxes in controversy are income taxes for the calendar year 1934. The amount of deficiency asserted is \$2,909.41, of which amount \$2,756.62 is in dispute.

4. The determination of tax set forth in said notice of deficiency is based upon the following error:

(a) Including in the income of petitioner income from George B. Clifford, Jr., Trust (dated June 20, 1934) in the sum of \$10,111.23.

5. The facts upon which the petitioner relies are as follows:

(a) The petitioner on or about June 20, 1934, declared himself trustee of certain securities, under a written Declaration of Trust, a true and correct copy of which is hereto attached, marked "Exhibit B," and made a part hereof as fully as if herein set forth.

(b) As Trustee under said Declaration of Trust, the petitioner during the year 1934 received interest upon Tax Free Covenant Bonds in the sum of \$500.00, other interest in the sum of \$480.45, and dividends in the sum of \$8,000.00. As such trustee, petitioner, after making deductions in the sum of \$81.38 for expenses of the trust, distributed said ordinary income (interest and dividends) during the year 1934 to Virginia Clifford as beneficiary under said Declaration of Trust. That during the year 1934, petitioner as trustee under said trust, and not otherwise, realized a capital net gain of \$1,160.96.

(c) The petitioner and Virginia Clifford were living during the entire year 1934.

(d) The petitioner made and filed a fiduciary return as such trustee for the year 1934, and in said return showed all interest and dividends (except actual deductions from such income authorized by law) to have been distributed in said year to said Virginia Clifford as beneficiary thereof and showed said trust as beneficiary and recipient of said capital net gain.

4 (e) Virginia Clifford made and filed her individual return for the year 1934 and showed receipt in 1934 of all interest and dividends of

said trust as beneficiary of said Declaration of Trust (except deductions for expenses of trust).

(f) The petitioner, as trustee of said trust, and not otherwise, filed an income-tax return on behalf of said trust with respect to said capital net gain of said trust in the year 1934.

(g) Virginia Clifford was the sole person entitled by the terms of said trust to receive the income therefrom in the year 1934.

(h) The said Declaration of Trust was and is a valid irrevocable trust.

(i) The income of said trust is not the income of the petitioner.

(j) The Commissioner has included the income of said trust (interest, dividends, and net capital gains) in the year 1934 in the income of the petitioner.

(k) The determination of the Commissioner is erroneous.

Wherefore, the petitioner prays that this Board may hear the proceeding and determine that the deficiency due from the petitioner for the year 1934 shall not exceed \$152.79.

GEORGE B. CLIFFORD, Jr.,

*Petitioner.*

THOMAS P. HELMEY,

*Counsel for Petitioner,*

1100 First National-Soo Line Bldg.,

Minneapolis, Minnesota.

[Duly sworn to by George B. Clifford, Jr.; jurat omitted in printing.]

*Exhibit A to petition*

FEB. 15, 1937.

IT: D: 2

FDT: 90D

MR. GEORGE B. CLIFFORD, Jr.,

614 Security Building, Minneapolis, Minnesota.

SIR: You are advised that the determination of your income tax liability for the taxable year(s) 1934 discloses a deficiency of \$2,909.41 as shown in the statement attached.

In accordance with section 272 (a) of the Revenue Act of 1934, notice is hereby given of the deficiency mentioned. Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT: Cl: P: 7. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency and will prevent the accumulation of interest; since the interest

4 GUY T. HELVERING VS. GEORGE B. CLIFFORD, JR.

6 period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,  
*Commissioner.*

By CHAR. T. RUSSELL,  
*Deputy Commissioner.*

Enclosures:  
Statement  
Form 870

FDT/JP-3

*Statement*

IT:D:2  
FDT:90D

In re: Mr. George B. Clifford, Jr., 614 Security Building, Minneapolis,  
Minnesota

**Income Tax Liability**

Year, 1934; Income Tax Liability, \$8,440.34; Income Tax Assessed, \$5,530.93; Deficiency, \$2,909.41.

Further reference is made to Bureau letters dated November 4, 1936, and January 7, 1937, advising you of the approval of the report of the internal revenue agent in charge, St. Paul, Minnesota, to your protest dated December 2, 1936, and to your letter of January 22, 1937, in reply to Bureau letter of January 7, 1937.

You are advised that the records of the Bureau do not disclose that there are any cases now pending in the Courts involving the taxability of trust income under section 166 of the Revenue Act of 1934. Inasmuch as you do not desire a conference or hearing at Washington, this letter of final determination is being issued to comply with the provisions of section 272 (a) of the Revenue Act of 1934.

Careful consideration has been accorded your protest dated August 4, 1936, against the findings of the examining officer and the information furnished at a conference held in the office of the internal revenue agent in charge.

7 After examination of the trust instruments dated September 22, 1933, and June 20, 1934, creating the George B. Clifford, Jr., Trust, of which your wife, Virginia Clifford, is the sole beneficiary, it appears that you, as grantor, retained unlimited power over the assets of the trust and the right of revocation. It is held, therefore, that the income of the trust is taxable to you under section 166 of the Revenue Act of 1934.

# GUY T. HELVERING VS. GEORGE B. CLIFFORD, JR.

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Net income shown on your return		\$44,652.48
Add:		
1. Interest:		
(a)	\$235.05	
(b)	187.50	\$422.55
2. Capital loss reduced		\$119.91
3. Dividends		145.56
4. Taxes		38.51
Forward		\$45,379.01
Brought forward		\$45,379.01
5. Fiduciary:		
(a) Interest:		
Trust #1	\$1,311.32	
Trust #2	980.45	
(b) Home Owners Loan Corporation: Interest, Trust #1	114.00	
(c) Dividends:		
Trust #1	8,000.00	
Trust #2	8,000.00	
(d) Capital gains:		
Trust #1	3,787.20	
Trust #2	1,180.96	
Total	\$23,353.93	
Less: Expenses	30.18	
	23,323.75	
Deduct: Trust income reported	13,345.01	9,978.74
Revised net income		\$35,357.75
8 Less: Personal exemption and credit for 4 dependents		4,100.00
Balance subject to surtax		\$51,257.75
Less:		
Dividends	\$39,687.17	
Interest on Home Owners Loan Corporation	114.00	
Earned income credit	1,350.00	\$41,151.17
Balance subject to normal tax		\$10,106.58
Normal tax at 4% on \$10,106.58		\$404.26
Surtax on \$51,257.75		8,077.33
Total		\$8,481.50
Less: Tax paid at source		41.25
Net tax assessable		\$8,440.24
Tax Previously assessed, account #200370		5,530.93
Deficiency		\$2,909.41

## EXPLANATION OF CHANGES

1. (a) Examination of your records of individual income discloses you received interest from bonds not containing a tax-free covenant clause of \$627.62, whereas you report \$392.57 only on line 3 of your return.

(b) Information certificates, form 1000, indicate you received \$775.00 as interest from bonds containing a tax-free covenant clause whereas you reported \$587.50 only from this source.



2. Since the cost of the Texas Gulf Producing Company stock sold in 1934 was \$1,155.09 instead of \$1,275.00 as stated on your return, capital loss was overstated by \$119.91.

3. Dividends received from the State Street Investment Corporation were understated by \$145.56.

4. Special improvement taxes in the sum of \$38.51 have been eliminated from your return. (Section 23(c)-4 of the Revenue Act of 1934.)

9 5. This item has been explained above.

A copy of this communication has been furnished Mr. Thomas P. Helme, 1100 First National-Soo Line Building, Minneapolis, Minnesota, in accordance with the authority conferred upon him in the power of attorney executed by you and on file in the Bureau.

FDT/JP-3

For "Declaration of Trust" see Stipulation of Facts.

Before United States Board of Tax Appeals

[Title omitted.]

*Answer of Commissioner of Internal Revenue*

Filed July 9, 1937

The Commissioner of Internal Revenue, by his attorney, Morrison Shafroth, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer admits and denies as follows:

1. 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the taxes in controversy are Federal income taxes for the calendar year 1934, but denies that the amount in dispute is \$2,756.62 as alleged in paragraph 3 of the petition.

4. (a). Denies that the Commissioner erred as alleged in paragraph 4 (a) of the petition.

5. (a) to (k). Denies the material allegations of fact contained in subparagraphs (a) to (k), inclusive, of paragraph 5 of the petition.

Denies generally and specifically each and every allegation set forth in taxpayer's petition not hereinbefore admitted, qualified, or denied.

10. Wherefore, it is prayed that the taxpayer's appeal be denied.

MORRISON SHAFROTH,  
Chief Counsel,  
Bureau of Internal Revenue.

Of Counsel:

IRVING M. TULLAR,  
Special Attorney,  
Bureau of Internal Revenue.

IMT/lds 7/8/37.



Before United States Board of Tax Appeals

Docket No. 89054

GEORGE B. CLIFFORD, JR., PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Thomas P. Helmev, Esq., for the petitioner. W. Frank Gibbs, Esq., for the respondent.

*Opinion*

Oppe: Respondent determined a deficiency in income tax for the year 1934 in the amount of \$2,909.41, of which amount \$2,756.62 is disputed by the petitioner in this proceeding. The issue is whether all or any part of the income of an alleged trust created by the petitioner is taxable to him.

From a stipulation filed by the parties the following are found as facts:

On June 20, 1934, the petitioner executed the following instrument:

DECLARATION OF TRUST

I, George Barnard Clifford, Jr., of Minneapolis, Minnesota, being the owner and holder of all the bonds, debentures, notes, certificates, or other securities referred to in the attached Exhibit A, do hereby acknowledge and declare that I do and will hold all of the same and all my right, title, and interest therein as a trust estate in trust for the uses and purposes and upon the terms and conditions following:

11 1. All the net income from the trust estate received during the continuance of the trust hereby created and remaining after payment of or due allowance for all expenses of holding, managing, or administering the same, including any taxes that I, as trustee thereof, may be obliged or may elect to pay, shall be held for the exclusive benefit of Virginia R. Clifford (for convenience herein after sometimes referred to as the life beneficiary).

2. The trust hereby created shall continue for a term of five (5) years from the date of this Declaration of Trust unless the life beneficiary or myself shall die during said term, and at the expiration of said term or upon the earlier death of the life beneficiary or myself during said term, whichever event shall first occur, the trust hereby created shall forthwith and without any further act or deed terminate.

3. During the continuance of this trust, I, as trustee, may pay and distribute to the life beneficiary, quarterly or at such other times as I may deem convenient during any calendar year, the whole or such part of the net income of said trust as I, as trustee, may in my absolute discretion determine. Upon the termination of the trust, at the expiration of the term of this trust or upon the earlier death of the life

beneficiary or myself as provided in paragraph numbered 2, above, any and all accrued or undistributed net income from the trust estate and any proceeds from the investment of such net income in my hands as trustee shall be deemed and treated as property owned absolutely by Virginia R. Clifford as of the time of the termination of the trust, and the remainder of the trust estate, including the entire principal or corpus thereof, shall be deemed and treated as property owned absolutely by me as of the same time.

4. During the continuance of the trust hereby created I shall have full power and authority to do the following things: (a) To exercise, or to appoint proxies to exercise, any and all voting powers under any certificates or shares of stock in the trust estate; (b) to retain, or to sell, exchange, mortgage, or pledge any certificates, shares of stock, securities, or other items of property or any fractional interest

12 in any of the same now or hereafter in the trust estate, whether as part of the corpus or principal thereof or as investments or proceeds and any income therefrom, upon such terms and for such consideration as I, in my absolute discretion, may deem fitting; (c) to invest any cash or money in the trust estate or any income therefrom by lending the same with or without security or by depositing the same in any bank, trust company, or other similar institution, or by purchasing secured or unsecured notes or certificates of deposit or by purchasing any bonds, stocks, securities or other personal property of any description, without restriction because of the speculative character of the investment or the rate of return therefrom or any laws pertaining to the investment of trust funds; (d) to collect, receive, and hold all dividends, interest, increment, and income belonging or due to the trust estate; (e) to compromise, settle, or adjust or release any claims which I may hold as trustee; (f) to hold any securities or items of property or any fractional interest therein, which may be in the trust estate, in the names of other persons or in my own name as an individual except as in this agreement otherwise provided.

5. Extraordinary cash dividends, any dividends paid in stock or the proceeds received from sale of any subscription rights not exercised, or any enhancement, realized or not, in the value of securities shall be considered and treated as principal and not income. All premiums on investments shall be charged and all discounts on investments shall be credited against or to principal as the case may be.

6. I shall not individually or as trustee be liable or responsible to the life beneficiary for any loss of any kind except in consequence of my own willful and deliberate violation of my duties as trustee herein particularly specified.

7. Except as otherwise herein provided specifically to the contrary, no title in or to the trust estate or any income therefrom shall vest in the life beneficiary, and neither the principal nor any future or accrued or undistributed income shall be liable or in any manner chargeable for the debts of the life beneficiary, and the life beneficiary shall have no power to sell, transfer, encumber, or in any

13 manner anticipate or dispose of any interest in the trust estate or any income therefrom prior to actual payment or delivery thereof to the life beneficiary.

On the same day as the foregoing instrument was executed Virginia R. Clifford, as the beneficiary thereof acknowledged in writing notice of its execution.

We further find:

That during the year 1934, Virginia Clifford had substantial means of her own. That her stocks, bonds, and other securities during said year had a value in excess of \$150,000. That her income from her own investments was approximately \$12,703.83.

That over a period of many years, commencing in 1934 or prior thereto, down to and including the present year 1938, the petitioner has made transfers of substantial sums in stocks and bonds directly to Mrs. Clifford and their three children. That the petitioner has intended by said gifts to give security and economic independence to his wife and children. That tax effects of such gifts were considered by the petitioner, but that such tax effects were not the sole consideration in making said gifts. That the creation of the trust of June 20, 1934, was part of this general purpose.

That petitioner on or about March 15, 1936, filed with the Collector of Internal Revenue at St. Paul, Minnesota, Gift Tax return for the calendar year 1934, and paid gift tax shown to be payable by said return. That said return included the value as of date of gift of said trust to Virginia Clifford.

\* \* \* (1) That he has, as trustee of said trust, distributed any income therefrom only to Virginia Clifford, as beneficiary thereof, except minor items disbursed for taxes or expenses of the trust itself.

That there were no additions, restrictions, or supplemental understandings modifying the terms of said Declaration of Trust of June 20, 1934. \* \* \* 1 That there was not at the time of the creation of said trust, and there never has been any agreement between the petitioner and Virginia Clifford as to the use of the income from said trust or any direction or instruction by the petitioner as to the use thereof.

That the petitioner has since the date of said trust maintained a separate bank account as Trustee; that he has placed in said account income and cash of said trust. That Virginia Clifford has for many years prior to the date of said trust and continuously to the present maintained a separate personal bank account in her own name; that she is the only person who could or did draw checks on said account at any time during 1934 to the present date. That Virginia Clifford

<sup>1</sup> The portions of the stipulation here omitted seem to us to be conclusions of law and for that reason we refrain from making them a part of our findings of fact. The commissions state that petitioner and his wife would testify substantially "That the petitioner, George B. Clifford, Jr., has at all times from and after June 20, 1934, held the securities listed in the schedule attached to the said Declaration of Trust, dated June 20, 1934, and the proceeds from any sale thereof and all investments of the said proceeds in trust pursuant to the terms of said Declaration of Trust" and "That Virginia Clifford has at all times been free to use the income of said trust for any purpose she might wish."

at all times deposited in her said bank account income from her own stocks, bonds, and other securities. That George B. Clifford, Jr., as trustee, has at all times issued checks against the said trust account to Virginia Clifford for the income of said trust, and said checks have at all times been deposited in Virginia Clifford's said personal bank account, larger items of income have been checked out of the trust account in this manner soon after receipt by trustee, small items have been permitted to accumulate for short periods in trustee's account before transfer to Virginia Clifford's personal account. That the income of said trust, when received by Mrs. Clifford, was deposited in and intermingled in the same account with income from all securities owned by Mrs. Clifford. That no record has been kept of the use or expenditure by Mrs. Clifford of the funds so deposited in Mrs. Clifford's personal bank account during the year 1934. That Mrs. Clifford paid from said account the monthly allowance of \$133.00 to her mother and other gifts to her mother and other relatives, purchases of clothing for herself and her children, personal jewelry, antiques, and other art objects and personal travel. That she also paid from said account certain so-called household bills or accounts as women servants, cleaning bills, and supplies.

That the petitioner and Mrs. Clifford did not intend or contemplate that the petitioner should be relieved or discharged from the liability for the payment of any household or family expenses by said trust. That the petitioner, after execution of said trust, paid large sums for so-called household or family expenses out of his own personal funds.

That the petitioner has not, subsequent to the creation of said trust, withdrawn or used for his own purpose any part of the principal or income of said trust and that he has not exercised any power with respect thereto which is not authorized by the terms of said Declaration of Trust.

During the taxable year the petitioner filed a fiduciary return for the trust and also a tax return on behalf of the trust.

The fiduciary return of said trust showed a net income of \$9,764.13; this return showed the capital gain therefrom, or \$1,310.20, as distributed to and chargeable to the trust; and showed the balance of net income therefrom, or \$8,453.93, as distributed to and chargeable to Virginia Clifford. The tax return filed on behalf of the trust included the item of \$1,310.20 and tax upon this amount after deducting personal exemption of \$1,000 was paid by the trust. The net income of the trust from sources other than capital gains were included in the individual return of Virginia Clifford for the year 1934. The petitioner did not include any income of the said trust in his return for the year 1934.

The petitioner objects to the inclusion in his income for the year 1934 of any part of the income of the trust under the Declaration of Trust, dated June 20, 1934. No objection is made to the adjustments in income, and deductions in the return of said trust. It is



16 agreed between the parties hereto that the following statement correctly reflects the income of said trust:

Interest	480.45	
Interest tax-free covenant bonds	500.00	
Capital Gain	1,160.96	
Dividends	8,000.00	
Total income		\$10,141.41
Taxes paid	.18	
Other deductions	30.00	
Total deductions		30.18
Net income		\$10,111.23

Respondent's determination is sustained on the authority of Benjamin F. Wollman, 31 B. T. A. 37, William C. Rands, 34 B. T. A. 1107, and Warren H. Corning, 36 B. T. A. 301, 308. The rights of possession, control and ultimate enjoyment remaining in the petitioner under the terms of the trust instrument are similar to those in the Wollman case and, as there, "for Federal tax purposes we think his retained interest and powers were so substantial that the securities may properly be regarded as his property and the income taxable to him. \* \* \* The line that separates petitioner's rights under these powers from those of complete ownership is too fine to be distinguishable." For tax purposes the arrangement was no more than an ineffectual attempt to secure a result whereby "the fruits are attributed to a different tree from that on which they grow." Lucas vs. Earl, 261 U. S. 111; William C. Rands, supra, 1115, Henry A. B. Dunning, 36 B. T. A. 1222, is not an authority to the contrary since the facts there recognized as distinguishing the Wollman and Rands cases (p. 1227) are also present here. In Meredith Wood, 37 B. T. A. 1065, John E. Rovensky, 37 B. T. A. 704, and Phebe Warren McKean Downs, 36 B. T. A. 1129, this question was not considered nor decided. We need not discuss respondent's further contentions that petitioner is also taxable under the provisions of sections 17 166 or 167, Revenue Act of 1934, or under the "family maintenance" doctrine.

Decision will be entered for the respondent.

Enter.

Entered Sep. 26, 1938.

(Seal) U. S. Board of Tax Appeals. 1924.

Before United States Board of Tax Appeals, Washington

[Title omitted.]

*Order of redetermination*

September 27, 1938.

Pursuant to the determination of the Board, as set forth in its Memorandum Opinion, entered September 26, 1938, it is



Ordered and Decided: That there is a deficiency in income tax of \$2,909.41 for the year 1934.

Enter.

Entered Sep. 27, 1938.

(Seal of U. S. Board of Tax Appeals.)

CLARENCE V. OPPER,  
Member.

Before United States Board of Tax Appeals

[Title omitted.]

*Motion for review by full Board and, if that be not granted, for reconsideration*

Filed Oct. 24, 1938

18 Comes now the petitioner by his counsel, Thomas P. Helmeý, and moves this honorable Board to grant the said petitioner a review by the entire Board of the report of the division entered in the above-entitled matter on September 26, 1938. If that motion be not granted, petitioner further moves the honorable Board for reconsideration of the above-entitled matter.

The petitioner, on June 20, 1934, by a declaration of trust, declared himself trustee of certain securities to pay the income therefrom to his wife for a period of five years or until the earlier death of either petitioner-settlor or his wife. By the terms of the trust, the income therefrom during the trust period is the absolute property of the wife-beneficiary. The principal of the trust fund reverts to this petitioner upon termination of the trust. The petitioner has administered the trust in accordance with its provisions, has maintained a separate bank account as trustee, and paid all income of the trust for the year 1934 to his wife in that year.

Each of said motions is made on the following grounds:

(1) The report by its own language determines this case in a manner inconsistent with recent rulings of this Board. The divisional decision states: "In Meredith Wood, 37 B. T. A. 1065, John E. Rovensky, 37 B. T. A. 704, and Phebe Warren McKean Downs, 36 B. T. A. 1129, this question was not considered nor decided." The clear implication is that if the question had been considered or decided, the previous decisions would have been in accord with the divisional report in the present case. Before Meredith Wood, John E. Rovensky and Phebe Warren McKean Downs are reversed, the whole matter of short-term irrevocable trusts should receive the reconsideration of the entire Board.

(2) The divisional decision cannot be reconciled with the Board's earlier decision in Meredith Wood, 37 B. T. A. 1065 (June 17, 1938),

and the subsequent memorandum decisions of H. Rodney Sharp (Paragraph 7272D of C. C. H. 1938 Tax Service) and Elizabeth Achelis (Paragraph 7629A of C. C. H. 1938 Tax Service). The Meredith Wood case cannot be distinguished from the present case.

In both cases petitioner declared himself trustee of certain securities for a period of five years; in both cases the beneficiary became the absolute and unconditional owner of the trust income for the five-year period; in both cases the petitioner had a reversionary interest in the corpus; in both cases the trustee had the same trust powers. Yet in the Meredith Wood case the trust income was held not taxable to the settlor. In the present case the trust income was held taxable to the settlor. If the trust entity in the present case may be disregarded for income-tax purposes, then the trust entity in Meredith Wood should also be disregarded. If the trust entity should be respected, as it was in the Meredith Wood case, then it should also be respected here.

(3) The determination of the Board in the present case should conform with other recent decisions of this Board. If this line of discussion is to be overruled, such action should be taken only after full argument and joint consideration by the entire Board.

Respectfully submitted.

THOMAS P. HELMEY,

*Counsel for Taxpayer,*

*1100 First National-Soo Line Building,*

*Minneapolis, Minnesota.*

F. H. STINCHFIELD

(Stinchfield, Mackall, Crounse, McNally & Moore and

William W. Watson).

*Of Counsel.*

Before United States Board of Tax Appeals

*Order denying review by the full Board and reconsideration*

Under date of September 26, 1938, a memorandum opinion by Division No. 14 (Opper) was entered in the above entitled proceeding and on October 24, 1938, counsel for the petitioner filed with the Board a "Motion for Review by the Full Board and, if that be not Granted, for Reconsideration." Petitioner's motion has been carefully considered in connection with the report of the Division and it is not believed that the motion should be granted. Accordingly, the motion is Denied.

Petitioner is granted an exception to the denial of his said motion.

C. R. ARUNDELL,

*Chairman*

Dated October 25, 1938.

[Seal] U. S. Board of Tax Appeals, 1924.

In United States Circuit Court of Appeals for the Eighth Circuit  
*Petition of George B. Clifford, Jr., for review of decision of U. S.  
 Board of Tax Appeals*

Filed December 20, 1938

[Title omitted.]

*To the Honorable Judges of the United States Circuit Court of  
 Appeals for the Eighth Circuit:*

Now comes, George B. Clifford, Jr., the petitioner on review above named, personally and by his attorney, Thomas P. Helme, and respectfully shows:

I

JURISDICTION

This is a proceeding for review by the United States Circuit Court of Appeals for the Eighth Circuit of a decision of the United States Board of Tax Appeals, entered on the 27th day of September 1938, redetermining a deficiency in income taxes for the calendar year 1934 against your petitioner in the amount of \$2,909.41.

Your petitioner (hereinafter sometimes referred to as the taxpayer), at the time of filing this petition is, and at all times hereinafter referred to was, a citizen of the United States and a resident of the City of Minneapolis, County of Hennepin, and State of Minnesota.

The respondent (hereinafter sometimes referred to as the Commissioner) is the duly appointed, qualified, and acting Commissioner of Internal Revenue of the United States, holding this office under and by virtue of the laws of the United States.

The petitioner made his income-tax return for the calendar year 1934, the taxable year involved in this proceeding, to the Collector of Internal Revenue for the District of Minnesota, whose office now is, and at all times herein referred to was, located in the City of St. Paul, State of Minnesota, and within the Judicial district of the United States Circuit Court of Appeals for the Eighth Circuit.

II

NATURE OF CONTROVERSY

The taxpayer, Mr. Clifford, filed his income-tax return for the calendar year 1934 on March 14, 1935.

On February 15, 1937, the Commissioner, pursuant to the provisions of Section 272 (a) of the Revenue Act of 1934 (48 Stat. 680) forwarded to the taxpayer by registered mail a notice of deficiency wherein the taxpayer was notified of the Commissioner's determination of deficiency of \$2,909.41 in the taxpayer's income-tax liability for the year 1934.

Thereafter on May 13, 1937, the taxpayer filed a petition with the United States Board of Tax Appeals for a redetermination of the proposed deficiency in his income-tax liability for the year 1934, as disclosed by the notice of deficiency dated February 15, 1937, as aforesaid, which petition was assigned Docket No. 89054. \$2,756.62 of the proposed deficiency of \$2,909.41 was disputed. On July 9, 1937, the Commissioner filed with the Board of Tax Appeals his answer to the petition filed by the taxpayer. The proceeding came on for hearing before a division of the Board of Tax Appeals sitting at St. Paul, Minnesota, on June 20, 1938.

22 At the hearing a stipulation as to facts was offered and received in evidence. No additional evidence was offered except several original returns. The sole issue is whether the 1934 income from a trust created by the taxpayer on June 20, 1934, should be taxed to him individually as part of his 1934 income. (This trust of June 20, 1934, is hereinafter sometimes referred to as the trust.) The deficiency letter of February 15, 1937, treated the trust income as part of the taxpayer's income. The Commissioner expressed in such letter his conclusion that the taxpayer, as grantor, retained unlimited power over the assets of the trust and, in addition, a power of revocation. On such grounds, the Commissioner held the trust income taxable to the taxpayer as settlor under Section 166 of the Revenue Act of 1934. The Board of Tax Appeals states in its opinion that "the rights of possession, control, and ultimate enjoyment remaining in the petitioner under the terms of the trust instrument" are so substantial that the trust assets should be regarded as petitioner's and the income taxable to him individually. This conclusion was reached by the Board without consideration of the Commissioner's further contentions under Sections 166 and 167 of the Revenue Act of 1934 or under the "family maintenance" doctrine.

On September 26, 1938, the Board of Tax Appeals entered its memorandum opinion wherein it held that the income of the trust was to be included in the taxpayer's income. On September 27, 1938, the Board entered its decision pursuant to said opinion, wherein it was ordered and decided that there was a deficiency of \$2,909.41 in income tax for the year 1934. On October 24, 1938, the taxpayer filed an alternative motion for review by the full Board or for reconsideration. On October 25, 1938, the Board denied the motion.

The facts are briefly summarized as follows:

23 The taxpayer by a written declaration of trust on June 20, 1934, declared himself trustee of certain securities. Mrs. Virginia Clifford, the wife of the settlor, was the beneficiary of the trust. The trust was to continue for five years or until the earlier death of either the settlor or the beneficiary. The trustee might distribute income currently to his wife as beneficiary. Upon termination of the trust she became entitled to any accumulated income and to the proceeds from the investment thereof. Upon termination of the trust, the principal or corpus of the trust was to become the absolute prop-



erty of the taxpayer (or settlor). The Trustee was given the usual powers granted to a trustee in management of the estate. Neither the settlor nor any other person was given any power to revoke the trust. All income of the trust in 1934, except capital gains, was distributed to the wife (beneficiary). The trust income as received by the beneficiary was mingled with income which she received from her own securities. No limitation upon her use of such income was imposed by the trust instrument or by any collateral understanding or instruction.

### III

#### COURT OF REVIEW

The taxpayer, being aggrieved by the findings of fact and conclusions of law contained in said findings and opinion of the Board, and by its decision entered pursuant thereto, desires to obtain a review thereof by the Court of Appeals for the Eighth Circuit.

### IV

#### ASSIGNMENTS OF ERROR

The petitioner assigns error in the decision, acts, and omissions of the Board Tax Appeals in the following respects:

1. The Board erred, in that its decision is contrary to law.
2. The Board erred in finding that the taxpayer retained such rights of possession, control, and ultimate enjoyment with respect to the trust property that such property may properly be regarded the taxpayer's.
3. The Board erred in failing to find that the taxpayer had no such rights of possession, control, or ultimate enjoyment with respect to the trust property as would justify regarding the trust property as the taxpayer's.
- 24 4. The Board erred in failing to find that the taxpayer had created a bona fide, valid, and existing trust.
5. The Board erred in failing to find that the taxpayer retained no powers over trust property except such as he was given as trustee by the law and the trust instrument.
6. The Board erred in failing to find that the taxpayer as trustee retained under the trust instrument only such powers generally granted to trustees.
7. The Board erred in finding that all of the income of the trust was the income of the taxpayer.
8. The Board erred in finding that any part of the income of the trust was the income of the taxpayer.
9. The Board erred in failing to find that the net income of the trust other than capital gains was income of Virginia Clifford, the beneficiary of the trust.



10. The Board erred in failing to find that capital gains of the trust were income of the trust.

11. The Board erred in holding that the entire income of the trust was taxable to the taxpayer.

12. The Board erred in holding that any part of the income of the trust was taxable to the taxpayer.

13. The Board erred in failing to hold that the income of the trust other than capital gains was taxable to Virginia Clifford.

14. The Board erred in failing to hold that capital gains of the trust were taxable to the trust.

15. The Board erred in finding the following portion of the stipulation to be a conclusion of law:

"That the petitioner, George B. Clifford, Jr., has at all times from and after June 20, 1934, held the securities listed in the schedule attached to the said Declaration of Trust dated June 20, 1934, and the proceeds from any sale thereof and all investments of the said proceeds in trust pursuant to the terms of said Declaration of Trust."

25 16. The Board erred in failing to find as a fact, as was stipulated:

"That the petitioner, George B. Clifford, Jr., has at all times from and after June 20, 1934, held the securities listed in the schedule attached to the said Declaration of Trust dated June 20, 1934, and the proceeds from any sale thereof and all investments of the said proceeds in trust pursuant to the terms of said Declaration of Trust."

17. The Board erred in holding the following portion of the stipulation to be a conclusion of law:

"That Virginia Clifford has at all times been free to use the income of said trust for any purpose she might wish."

18. The Board erred in failing to find as a fact, as was stipulated:

"That Virginia Clifford has at all times been free to use the income of said trust for any purpose she might wish."

19. The Board erred in entering its decision and judgment for a deficiency of \$2,909.41, instead of a deficiency of \$152.79.

20. The Board erred in that its decision is not supported by any substantial evidence.

21. The Board erred in that its decision is not supported by the stipulated facts in this proceeding.

22. The Board erred in that its decision is not supported by its findings of fact in its memorandum opinion.

23. The Board erred in denying taxpayer's alternative motion for review by the full Board or for reconsideration.

Wherefore, the taxpayer petitions that the aforesaid decision of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Eighth Circuit; that a transcript of record be prepared in accordance with law and the rules of said Court and transmitted to the Clerk of said Court for filing, and that

18

GUY T. HELVERING VS. GEORGE B. CLIFFORD, JR.

26

appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

GEORGE B. CLIFFORD, Jr.,

THOMAS P. HELMEY,

*Counsel for Petitioner,*

*1100 First National-Soo Line Bldg.,*

*Minneapolis, Minnesota.*

F. H. STINCHFIELD,

*(Stinchfield, Mackall, Crounse, McNally & Moore,  
and William W. Watson.)*

*[Duly sworn to by George B. Clifford, Jr.; jurat omitted in printing.]*

*In United States Circuit Court of Appeals*

*Notice of filing of petition for review and service*

Filed December 20, 1938

To J. P. WENCHEL, *Chief Counsel, Bureau of Internal Revenue,  
Washington, D. C.:*

Please take notice that the petitioner on the 20th day of December 1938, filed with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the Court of Appeals of the Eighth Circuit of the decision of the Board heretofore rendered in the above entitled cause. A copy of the petition for  
27 review and the assignments of error as filed is hereto attached and served upon you.

Dated at Minneapolis, Minnesota, this 20th day of December 1938.  
Respectfully,

GEORGE B. CLIFFORD, Jr.,

THOMAS P. HELMEY,

*Counsel for Petitioner.*

*1100 First Natl.-Soo-Line Bldg.,*

*Minneapolis, Minnesota.*

Personal service of the foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 20th day of December 1938.

J. P. WENCHEL,

*Chief Counsel,*

*Bureau of Internal Revenue,*

*Counsel for Respondent.*

INTERVIEW AND RESPONDENT'S EXHIBIT A-1

[Faint, illegible text block containing several paragraphs of handwritten or typed information, possibly a transcript or report. The text is heavily obscured by noise and artifacts.]

# FIDUCIARY RETURN OF INCOME

## For Calendar Year 1934

Period covered by return January 1, 1934, and ended March 31, 1935

1934  
Serial Number 950

File This Return Not Later Than the 15th Day of the Third Month Following the Close of the Calendar Year  
(PRINT NAMES AND ADDRESS PLAINLY BELOW)

Name of Estate or Trust: George P. Clifford, Jr. Trust

Disct (State Required)

Name and Address of Fiduciary

George P. Clifford, Jr. Trustee  
614 Security Building  
Minneapolis, Minnesota.

Has the prior year filed up for all the years covered by this return? Yes

Has the prior year been filed up for all the years covered by this return? St. Paul

Has the prior year been filed up for all the years covered by this return? St. Paul

Are there any assets of the estate or trust?

Cash

### INCOME

Income from Real Estate: (See Instructions)

Income from Stocks and Bonds: (See Instructions)

Income from Other Sources: (See Instructions)

Income from Other Sources: (See Instructions)

### DEDUCTIONS

Deductions from Income: (See Instructions)

Deductions from Income: (See Instructions)

Deductions from Income: (See Instructions)

Deductions from Income: (See Instructions)

Deductions from Income: (See Instructions)

Deductions from Income: (See Instructions)

Deductions from Income: (See Instructions)

Deductions from Income: (See Instructions)

Deductions from Income: (See Instructions)

Deductions from Income: (See Instructions)

PETITIONER'S AND

1. Name of taxpayer
2. Marital status for year
3. Other persons claiming exemption
4. Other persons claiming exemption
5. Plus inventory at beginning of year
6. Total Lines 2 to 5
7. Less inventory at end of year
8. Net cost or other basis (Line 7 minus Line 6)

Enter on line 8 the net cost or other basis of the property. If the property is sold, the net cost or other basis is the difference between the selling price and the cost or other basis.

Explanation of deductions claimed on Lines 7 and 8

### SCHEDULE C - INCOME FROM BUSINESS AND ROYALTIES

1. Kind of business	2. Date acquired	3. Date disposed	4. Description of business	5. Gross income	6. Deductions	7. Net income	8. Other income	9. Total income
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Explanation of deductions claimed on Line 6

### SCHEDULE D - CAPITAL GAINS AND LOSSES

1. Description of property	2. Date acquired	3. Date disposed	4. Description of property	5. Gross gain or loss	6. Deductions	7. Net gain or loss	8. Other gain or loss	9. Total gain or loss
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- Held 1 year or less
- Held over 1 year but not over 2 years
- Held over 2 years but not over 5 years
- Held over 5 years but not over 10 years
- Held over 10 years

Total gains and losses for the year. If the total gain or loss is a net gain, enter the net gain on line 9. If the total gain or loss is a net loss, enter the net loss on line 9. If the total gain or loss is a net gain, enter the net gain on line 9. If the total gain or loss is a net loss, enter the net loss on line 9.

### SCHEDULE E - INCOME FROM DIVIDENDS

Include all dividends received during the year, stating name, title and nature and address of corporation declaring the dividend.

### SCHEDULE F - EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 13, 14, AND 15

#### EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULE C AND D

1. Kind of property	2. Date acquired	3. Date disposed	4. Description of property	5. Depreciation allowed	6. Depreciation claimed	7. Depreciation remaining	8. Depreciation claimed	9. Depreciation remaining
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#### EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE C AND D, ITEM 12

1. Kind of property	2. Date acquired	3. Date disposed	4. Description of property	5. Loss claimed	6. Loss allowed	7. Loss remaining	8. Loss claimed	9. Loss remaining
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PETITIONER'S AND RESPONDER'S



1. Description of Property 2. Date Acquired 3. Date of Disposition 4. Amount Received 5. Basis 6. Gain or Loss 7. Character of Gain or Loss 8. Other Information

- \*Held 1 year or less
- \*Held over 1 year but not over 2 years
- \*Held over 2 years but not over 5 years
- \*Held over 5 years but not over 10 years
- \*Held over 10 years

The taxpayer is required to file this statement with the return for the year in which the property is disposed of, or with the return for the year in which the property is first held, whichever is later. The statement should be filed with the return for the year in which the property is first held, if the property is held for more than one year.

### SCHEDULE D - INCOME FROM DIVIDENDS

Enter all dividends received during the year, stating amounts and names and addresses of corporations from which the dividends were received.

### SCHEDULE E - EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 13, 14, AND 15

#### EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Kind of Property (If buildings, state material or work acquired)	2. Date Acquired	3. Cost or Other Basis (Indicate basis)	4. Useful Life (Indicate in years)	5. Depreciation Allowed (See instructions)	6. Remaining Cost or Other Basis (See instructions)	7. Life Span (Indicate in years)	8. Estimated Salvage Value (Indicate in dollars)	9. Depreciation Allowed (See instructions)
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#### EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A AND IN ITEM 12

1. Kind of Property	2. Date Acquired	3. Date of Loss	4. Description of Loss (Indicate in dollars)	5. Insurance Proceeds (Indicate in dollars)	6. Uninsured Loss (Indicate in dollars)	7. Description of Loss (Indicate in dollars)
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### AFFIDAVIT (See Instruction 25)

I, the undersigned, being duly sworn, depose and say that the information furnished in the foregoing schedules and in the return is true and correct, and I am not aware of any information which would require the filing of a return for the year in which the property was first held.

NOTARY SEAL

### AFFIDAVIT (See Instruction 25)

I, the undersigned, being duly sworn, depose and say that the information furnished in the foregoing schedules and in the return is true and correct, and I am not aware of any information which would require the filing of a return for the year in which the property was first held.

NOTARY SEAL





# SCHEDULE A INCOME OR LOSS FROM TRADE OR BUSINESS (See Instruction 1)

1. Total receipts from trade or business (State kind of business)  
 Cost of Goods Sold  
 2. Labor  
 3. Material and supplies  
 4. Merchandise bought for sale  
 5. Other costs (Specify below or on separate sheet)  
 6. Plus inventory at beginning of year  
 7. Total (Lines 2 to 6)  
 8. Less inventory at end of year  
 9. Net Cost of Goods Sold (Line 7 minus Line 8)  
 Enter "C" or "C or M" on Lines 6 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.

OTHER BUSINESS DEDUCTIONS  
 10. Salaries except labor reported on Line 2  
 11. Interest on business indebtedness to others  
 12. Taxes on business and business property  
 13. Long-term expenses to business at end of year  
 14. Depreciation on business property  
 15. Depreciation on equipment and depletion on oil and gas property at end of year  
 16. Rent, interest, and other expenses (Specify on separate sheet)  
 17. Total (Lines 10 to 16)  
 18. Total Deductions (Line 9 plus Line 17)  
 19. NET PROFIT OR LOSS (Line 9 minus Line 18) Enter as item 1.

## SCHEDULE B INCOME FROM RENTS AND ROYALTIES (See Instruction 1)

1. Kind of Property	2. Amount Received	3. Cost or Value at Beginning of Year	4. Depreciation or Amortization (See Instructions)	5. Expenses	6. Other Expenses (Interest, taxes, etc.)	7. Net Profit (Enter as item 1)

Explanation of Deductions claimed on Lines 4 and 6.

## SCHEDULE C CAPITAL GAINS AND LOSSES (See Instruction 1)

1. Description of Property	2. Date Acquired	3. Date Sold	4. Cost or Other Basis	5. Proceeds from Sale	6. Gain or Loss	7. Taxable Gain or Loss (Enter as item 1)

10. Total Capital Gains (Enter net gain from Lines 7, 8, and 9)  
 11. Total Capital Losses (Enter net loss from Lines 7, 8, and 9)  
 12. Net Capital Gain or Loss (Line 10 minus Line 11) Enter as item 1.

## SCHEDULE D INCOME FROM DIVIDENDS

1. List all dividends received during the year, stating amounts and names and addresses of corporations declaring the dividends.

## SCHEDULE E EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 13, 14, AND 15

### EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Kind of Property	2. Date Acquired	3. Cost or Value at Beginning of Year	4. Method of Depreciation	5. Depreciation for Year	6. Remaining Basis at End of Year	7. Explanation (See Instructions)

### EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC. CLAIMED IN SCHEDULE A AND IN ITEM 12

1. Kind of Property	2. Date Acquired	3. Cost or Value at Beginning of Year	4. Amount of Loss	5. Explanation (See Instructions)

PETITIONER'S AND RESPONDENT



# SCHEDULE C - CAPITAL GAINS AND LOSSES

1. Description of Capital Asset	2. Date Acquired	3. Date Disposed	4. Basis or Other Cost	5. Proceeds from Sale	6. Capital Gain or Loss	7. Identification Number
100 shares of ABC Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	
100 shares of DEF Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	
100 shares of GHI Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	
100 shares of JKL Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	
100 shares of MNO Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	
100 shares of PQR Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	
100 shares of STU Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	
100 shares of VWX Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	
100 shares of YZ Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	
100 shares of ABC Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	
100 shares of DEF Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	
100 shares of GHI Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	
100 shares of JKL Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	
100 shares of MNO Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	
100 shares of PQR Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	
100 shares of STU Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	
100 shares of VWX Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	
100 shares of YZ Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	

These Capital Gains (Enter net gain, showing from the "Net" column) are also subject to the extent of 42,000 plus capital gains.

These Capital Gains (Enter net gain, showing from the "Net" column) are also subject to the extent of 42,000 plus capital gains.

These Capital Gains (Enter net gain, showing from the "Net" column) are also subject to the extent of 42,000 plus capital gains.

## SCHEDULE D - INCOME FROM DIVIDENDS

List all dividends received during the year, stating amounts and names and addresses of corporations declaring the dividends.

## SCHEDULE E - EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 13, 14, AND 15

### EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Description of Property	2. Date Acquired	3. Method of Depreciation	4. Amount of Depreciation	5. Basis or Other Cost	6. Depreciation Claimed	7. Depreciation Allowed	8. Depreciation Claimed	9. Depreciation Allowed
100 shares of ABC Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	\$0.00	\$0.00	\$0.00
100 shares of DEF Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	\$0.00	\$0.00	\$0.00
100 shares of GHI Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	\$0.00	\$0.00	\$0.00
100 shares of JKL Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	\$0.00	\$0.00	\$0.00
100 shares of MNO Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	\$0.00	\$0.00	\$0.00
100 shares of PQR Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	\$0.00	\$0.00	\$0.00
100 shares of STU Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	\$0.00	\$0.00	\$0.00
100 shares of VWX Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	\$0.00	\$0.00	\$0.00
100 shares of YZ Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	\$0.00	\$0.00	\$0.00

### EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A AND IN ITEM 12

1. Kind of Property	2. Date Acquired	3. Date of Loss	4. Amount of Loss	5. Basis or Other Cost	6. Deduction Claimed	7. Deduction Allowed
100 shares of ABC Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	\$0.00
100 shares of DEF Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	\$0.00
100 shares of GHI Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	\$0.00
100 shares of JKL Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	\$0.00
100 shares of MNO Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	\$0.00
100 shares of PQR Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	\$0.00
100 shares of STU Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	\$0.00
100 shares of VWX Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	\$0.00
100 shares of YZ Corp. stock	1/1/55	12/31/55	\$100.00	\$100.00	\$0.00	\$0.00

### AFFIDAVIT (See Instruction 25)

I swear or affirm that this return, including its accompanying schedules and statements, if any, has been prepared to the best of my knowledge and belief, is a true, correct, and complete return, made in good faith for the accounting period stated, and that I am not aware of any fraud or evasion in connection with the same.

Sworn to and subscribed before me this 1st day of January, 1956.



(Signature of officer administering oath)

### AFFIDAVIT (See Instruction 25)

I swear or affirm that I have prepared this return for the person named herein and that the return, including its accompanying schedules and statements, if any, is a true, correct, and complete statement of all the information respecting the income tax liability of the person for whom this return has been prepared, of which I have any knowledge.

Sworn to and subscribed before me this 1st day of January, 1956.



(Signature of officer administering oath)

(Signature of person preparing the return)

(Signature of person preparing the return)

(Signature of person preparing the return)

1.5	100.00
2.5	246.20
10.0	100.00
10.0	200.00

---

21.20

FORM 1094 MUST BE FILED WITH THIS RETURN

# INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN \$5,000  
AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

## For Calendar Year 1934

or Fiscal year begun 1934 and ended 1934

File This Return Not Later Than the 15th Day of the Third Month Following the Close of the Taxable Year

PRINT NAME AND ADDRESS PLAINLY BELOW

Do Not Write in These Spaces

File  
Code

Serial  
Number

District

Code



1. State the name of the taxpayer as it appears on the return.
2. State the name of the taxpayer as it appears on the return.
3. State the name of the taxpayer as it appears on the return.
4. State the name of the taxpayer as it appears on the return.

5. State the name of the taxpayer as it appears on the return.
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19. State the name of the taxpayer as it appears on the return.
20. State the name of the taxpayer as it appears on the return.

21. State the name of the taxpayer as it appears on the return.
22. State the name of the taxpayer as it appears on the return.

23. State the name of the taxpayer as it appears on the return.
24. State the name of the taxpayer as it appears on the return.

25. State the name of the taxpayer as it appears on the return.
26. State the name of the taxpayer as it appears on the return.

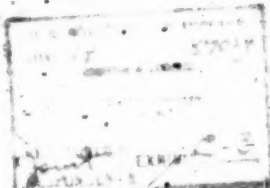
27. State the name of the taxpayer as it appears on the return.

### INCOME

1. Salaries, Wages, Commissions, Fees, etc.
2. Income for Loss from Business or Profession.
3. Interest on Bonds, Dividends, Notes, Accumulating Bonds, etc.
4. Interest on Tax-Free Certificate Bonds upon Which a Tax was Paid at Maturity.
5. Income for Loss from Business or Profession.
6. Income for Loss from Business or Profession.
7. Income for Loss from Business or Profession.
8. Income for Loss from Business or Profession.
9. Income for Loss from Business or Profession.
10. Income for Loss from Business or Profession.
11. Income for Loss from Business or Profession.
12. Income for Loss from Business or Profession.
13. Income for Loss from Business or Profession.
14. Income for Loss from Business or Profession.
15. Income for Loss from Business or Profession.
16. Income for Loss from Business or Profession.
17. Income for Loss from Business or Profession.
18. Income for Loss from Business or Profession.
19. Income for Loss from Business or Profession.
20. Income for Loss from Business or Profession.

### DEDUCTIONS

1. Interest Paid.
2. Taxes Paid.
3. Charitable Contributions.
4. Gift Taxes.
5. State and Local Taxes.
6. Federal Income Tax.
7. Federal Income Tax.
8. Federal Income Tax.
9. Federal Income Tax.
10. Federal Income Tax.
11. Federal Income Tax.
12. Federal Income Tax.
13. Federal Income Tax.
14. Federal Income Tax.
15. Federal Income Tax.
16. Federal Income Tax.
17. Federal Income Tax.
18. Federal Income Tax.
19. Federal Income Tax.
20. Federal Income Tax.



COMPUTATION OF TAX. See Instruction 21

YOUR NAME AND ADDRESS









In United States Circuit Court of Appeals for the Eighth Circuit

[Title omitted.]

*Statement of evidence*

Filed January 31, 1939

The following is a statement of evidence submitted to and proceedings had at the hearing before the Board of Tax Appeals in the above entitled cause.

This case came on for hearing before the Honorable Clarence V. Oppen, Member of the United States Board of Tax Appeals, on the 20th day of June 1938, at St. Paul, Minnesota. Thomas P. Helmey, Esq., appeared for the petitioners on review, and W. Frank Gibbs, Esq., Bureau of Internal Revenue, and Honorable J. P. Wenchel, Chief Counsel for the Bureau of Internal Revenue, appeared for the respondent on review.

*Offers in evidence*

Counsel for respondent on review offered in evidence an original and one copy of stipulation as to facts. The Member of the Board of Tax Appeals sitting in this case then received the stipulation in evidence, but it was not marked as an exhibit. The stipulation as to facts is incorporated herein and made a part hereof by this reference.

Thereupon, there was offered, and the Member received in evidence, the following exhibits:

Petitioner's and Respondent's Exhibit A-1

Fiduciary return for the period January 1, 1934, to June 19, 1934, by George B. Clifford, Jr., Trust of September 22, 1933, George B. Clifford, Jr., Trustee.

Petitioner's and Respondent's Exhibit B-2

Fiduciary return for the period June 20, 1934, to December 31, 1934, of George B. Clifford, Jr., Trust of June 20, 1934, George B. Clifford, Jr., Trustee.

Petitioner's and Respondent's Exhibit C-3

Income-tax return for the period June 20, 1934, to December 31, 1934, of the George B. Clifford, Jr., Trust of June 20, 1934, George B. Clifford, Jr., Trustee. (This is income-tax return, while Exhibit B-2 is the fiduciary return of the Trust of June 20, 1934.)

## Petitioner's and Respondent's Exhibit D-4

Individual income-tax return for the calendar year 1934 of George B. Clifford, Jr.

## Petitioner's and Respondent's Exhibit E-5

Individual income-tax return for the calendar year 1934 of Virginia Clifford.

Counsel for petitioner on review made a motion for judgment in favor of the petitioner on the ground that the evidence as embodied in the stipulation and also in the exhibits received in evidence entitled the petitioner to the judgment of the Board as a matter of law, that no other conclusion could be sustained by the evidence submitted in the stipulation and by the exhibits. The Member took the motion under advisement.

*Approval of statement of evidence by counsel for respondent on review*

The foregoing, together with the stipulation as to facts, and Joint Exhibits A-1, B-2, C-3, D-4, and E-5, is all of the evidence material upon appeal adduced at the hearing before the United States Board of Tax Appeals, and the same is approved by the undersigned, as attorney for the petitioner on review.

THOMAS P. HELMEY,

*Attorney for Respondent on Review George B. Clifford, Jr.*

*Approval of statement of evidence by counsel for Commissioner of Internal Revenue*

The foregoing, together with the stipulation as to facts and Joint Exhibits A-1, B-2, C-3, D-4, and E-5 is all of the evidence material upon appeal adduced at the hearing before the United States Board of Tax Appeals, and the same is approved by the undersigned, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, as attorney for the Commissioner of Internal Revenue.

J. P. WENCHEL,

*Chief Counsel,*

*Bureau of Internal Revenue,*

*Attorney for Respondent Commissioner of Internal Revenue.*

*Order approving statement of evidence*

I hereby certify that the foregoing Statement of Evidence has been examined by me and found conformable to the truth and to contain all of the evidence in said case.

The foregoing Statement of Evidence is hereby approved and assigned and ordered to be made a part of the record in the above-entitled cause this 31st day of January 1939.

CLARENCE V. OPPER,





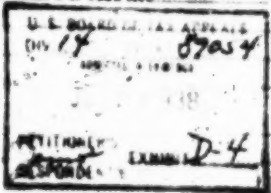


ATTACH EXHIBITS HERE

1. **Income or Loss from Business or Profession.** (From Schedule C.)
2. **Interest on Bank Deposits, Notes, Corporation Bonds, etc.** (except interest on tax-free covenant bonds)
3. **Interest on Tax-free Covenant Bonds** on which a Tax was Paid at Source
4. **Income or Loss from Partnerships, Syndicates, Pools, etc.** (State name, address, and kind of business)
5. **Income from Pensions, Annuities, etc.** (State name and address of pension or annuity plan or company)
6. **Dividends** (From Schedule D.)
7. **Capital Gain (or Loss).** (From Schedule D.)
8. **Taxable Interest on Liberty Bonds, etc.** (From Schedule D.)
9. **Dividends on Stock of:** (a) Domestic Corporations subject to taxation under Title I of 1934 Act; (b) Domestic Corporations not subject to taxation under Title I of 1934 Act; (c) Foreign Corporations
10. **Other Income.** (State nature of income and attach Schedule E summary)
11. **Total Income** (Items 1 to 10)

**DEDUCTIONS**

12. **Interest Paid**
13. **Taxes Paid** (Explain in Schedule E)
14. **Losses from Fire, Storm, etc.**
15. **Charitable Contributions**
16. **Other Deductions Authorized by Law** (Explain in Schedule E)
17. **Total Deductions** (Items 12 to 16)



**COMPUTATION OF TAX (See Instruction 23)**

18. <b>Normal tax</b> (Item 11 minus 20 above)	40,512.48	Normal tax 4% of Item 28	1,620.50
19. <b>Less: Personal exemption</b>	2,000.00	Surplus of Item 21 (See Instruction 23)	5,531.93
20. <b>Credit for Income Tax</b>	2,000.00	Total tax (Item 18 plus Item 19)	1,620.50
21. <b>Balance: Surplus net income</b>	40,512.48	Less: Income tax paid at source (7% of Item 4)	2,275.00
22. <b>Less: Interest on Liberty Bonds, etc.</b>		Income tax paid to a foreign country (See Instruction 23)	
23. <b>Surplus net income</b>	40,512.48	32. <b>Balance of Tax</b> (Item 21 minus Items 22 and 23)	5,531.93
24. <b>Less: Interest on Liberty Bonds, etc.</b>			
25. <b>Surplus net income</b>	40,512.48		
26. <b>Less: Interest on Liberty Bonds, etc.</b>			
27. <b>Surplus net income</b>	40,512.48		
28. <b>Balance subject to normal tax</b>	40,512.48		

Form 1086 filed with return

**AFFIDAVIT (See Instruction 27)**

I, the undersigned, do hereby certify that this return, including its accompanying schedules and statements of assets and liabilities, is a true, correct, and complete statement of all the information required by the Revenue Act of 1934 and the Regulations thereunder.

Sworn to and subscribed before me this 17th day of January, 1935, at New York, New York.

NOTARIAL SEAL

**AFFIDAVIT (See Instruction 27)**

I, the undersigned, do hereby certify that I have prepared this return for the person or persons named herein and that the return, including its accompanying schedules and statements of assets and liabilities, is a true, correct, and complete statement of all the information required by the Revenue Act of 1934 and the Regulations thereunder.

Sworn to and subscribed before me this 17th day of January, 1935, at New York, New York.

NOTARIAL SEAL

**AFFIDAVIT (See Instruction 27)**

I, the undersigned, do hereby certify that I have prepared this return for the person or persons named herein and that the return, including its accompanying schedules and statements of assets and liabilities, is a true, correct, and complete statement of all the information required by the Revenue Act of 1934 and the Regulations thereunder.

Sworn to and subscribed before me this 17th day of January, 1935, at New York, New York.

NOTARIAL SEAL

PETITIONER'S AND RESPONDENT'S EXHIBIT D-4

# SCHEDULE A - INCOME (OR LOSS) FROM BUSINESS OR PROFESSION (See Instruction 2)

1 Total receipts from business or profession (State kind of business)		OTHER BUSINESS DEDUCTIONS
2 Less: Cost of Goods Sold	\$	10 Salaries not included as "Wages" in Line 2 (do not deduct compensation for your services)
3 Material and supplies	\$	11 Interest on business indebtedness to others
4 Merchandise bought for sale	\$	12 Taxes on business and business property
5 Other costs (itemize below or on separate sheet)	\$	13 Losses (explain in table at foot of page)
6 Plus inventory at beginning of year	\$	14 Bad debts arising from sales or services
7 Total (Lines 2 to 6)	\$	15 Depreciation, obsolescence, and depletion (explain in table provided at foot of page)
8 Less inventory at end of year	\$	16 Rent, repairs, and other expenses (itemize below or on separate sheet)
9 Net Cost of Goods Sold (Line 7 minus Line 8)	\$	17 Total (Lines 10 to 16)
Enter "C" or "CM" on Lines 8 and 9 to indicate whether inventories are valued at cost, or cost or market, whichever is lower		18 TOTAL DEDUCTIONS, Line 9 plus Line 17
Explanation of deductions claimed on Lines 5 and 16		19 NET PROFIT (OR LOSS), Line 1 minus Line 18 (Enter as Profit)

# SCHEDULE B - INCOME FROM RENTS AND ROYALTIES (See Instruction 7)

1 Kind of Property	2 Amount Received	3 Cost or Basis at Beginning of Year	4 Depreciation or Amortization Deduction	5 Income	6 Other Income (Royalties)	7 Total Income
	\$	\$	\$	\$	\$	\$

Explanation of deductions claimed on Column 4

# SCHEDULE C - CAPITAL GAINS AND LOSSES (See Instructions 8 and 9)

1 Description of Property	2 Date Acquired	3 Date Disposed	4 Amount Realized	5 Basis	6 Capital Gain or Loss	7 Character of Gain or Loss

Total Gains and Losses: Total net gain or loss from all sales, exchanges, and dispositions of property is \$

# SCHEDULE D - INTEREST ON LIBERTY BONDS AND OTHER GOVERNMENT OR SEVERITY BONDS

1 Name of Issuer	2 Amount of Interest Received	3 Character of Interest
	\$	

# SCHEDULE E - EXPLANATION OF DEFERRED TAXES (See Instructions 10 and 11)

1 Description of Deferred Tax	2 Amount of Deferred Tax	3 Character of Deferred Tax
	\$	

PETITIONER'S AND RESPONDENT'S



**MICRO CARD**

TRADE

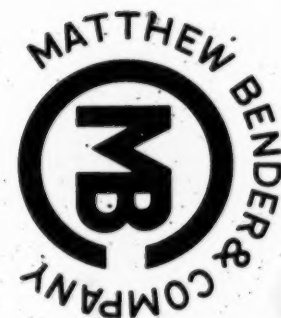
MARK



**22**

**39**

**1350**



**65**



# SCHEDULE B - INCOME FROM RENTS AND ROYALTIES (See Instruction 7)

1. Kind of Property	2. Amount Received	3. Cost or Value as of March 1, 1913, Wherever Applicable	4. Depreciation (Explain in column 5 how computed)	5. Balance	6. Other Expenses (Explain in column 7 how computed)	7. Net Income (Explain in column 8 how computed)
Patents	335.00			22.40	43.77	168.83

Explanation of deductions claimed in Column 6:

## SCHEDULE C - CAPITAL GAINS AND LOSSES (See Instruction 8)

1. Description of Property	2. Date Acquired	3. Date Sold or Disposed of	4. Amount Realized	5. Cost or Value as of March 1, 1913, Wherever Applicable	6. Cost or Value as of Date of Acquisition or March 1, 1913, Wherever Applicable	7. Depreciation Allowed (Explain in column 8 how computed)	8. Gain or Loss	9. Tax on Gain or Loss	10. Gain or Loss as Taken into Account
*Held less than 1 year								100	
*Held over 1 year but not over 2 years								80	
*Held over 2 years but not over 5 years								60	
*Held over 5 years but not over 10 years								40	
*Held over 10 years								20	

**TOTAL GAIN AND LOSS.** Enter net gain or loss as Item 8. (Capital losses are allowable only to the extent of \$2,000 plus capital gains.)

\*In reporting gains or losses of capital assets, attach separate schedule of categories for transactions involving such assets, and transfer gains to schedule B, and transfer losses to schedule C, as follows: (1) Capital assets held for one year or less; (2) Capital assets held for more than one year; (3) Capital assets held for more than one year, but not over 2 years; (4) Capital assets held for more than 2 years, but not over 5 years; (5) Capital assets held for more than 5 years, but not over 10 years; (6) Capital assets held for more than 10 years.

## SCHEDULE D - INTEREST ON LIBRARY BONDS AND OTHER OBLIGATIONS OF SECURITIES (See Instruction 9)

1. Description of Securities	2. Amount Received	3. Interest Received	4. Dividends Received	5. Total Income	6. Tax on Total Income	7. Net Income
a. Obligations of a State, Territory, or political subdivision thereof in the District of Columbia, or United States possessions						
b. Obligations issued under Federal Farm Loan Act, or under such Act as amended						
c. Liberty Bonds and other obligations of United States government						
d. Treasury Notes, Treasury Bills, and Treasury Certificates						
e. Obligations of municipalities of the United States, other than those reported in c. above						

## SCHEDULE E - INCOME FROM DIVIDENDS

Enter all dividends received during the year, stating amounts and names of corporations declaring the dividends.

## SCHEDULE F - EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 14, 16, 17, AND 18

Officer's Fund  
Deduction - \$100.00

## EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Description of Property	2. Date Acquired	3. Date Sold or Disposed of	4. Amount Realized	5. Cost or Value as of March 1, 1913, Wherever Applicable	6. Cost or Value as of Date of Acquisition or March 1, 1913, Wherever Applicable	7. Depreciation Allowed (Explain in column 8 how computed)	8. Gain or Loss	9. Tax on Gain or Loss	10. Gain or Loss as Taken into Account
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## EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE C AND IN ITEM 15

1. Description of Property	2. Date Acquired	3. Date Sold or Disposed of	4. Amount Realized	5. Cost or Value as of March 1, 1913, Wherever Applicable	6. Cost or Value as of Date of Acquisition or March 1, 1913, Wherever Applicable	7. Depreciation Allowed (Explain in column 8 how computed)	8. Gain or Loss	9. Tax on Gain or Loss	10. Gain or Loss as Taken into Account
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PETITIONER'S AND RESPONDENT'S EXHIBIT D-4

# PETITIONER'S AND RESPONDENT'S EXHIBIT D-4

GEORGE B. CLIFFORD, JR.

1934 Income Tax Return

## Schedule "C" -- Capital Gains and Losses

	Date Acquired	Date Sold	Amount Received	Cost	Gain Loss	Percent- age Used	Gain or Loss used
West Shore Railway bonds	12-20-33	1-26-34	3,848.00	3,450.00	398.00	100%	398.00
Lincoln Joint Stock Land Bank bonds	12-6-33	2-15-34	3,560.00	2,550.00	950.00	100%	950.00
Denver Joint Stock Land Bank bonds	12-12-33	3-2-34	3,500.00	2,575.00	925.00	100%	925.00
New York Joint Stock Land Bank bonds	12-6-33	3-10-34	3,200.00	2,525.00	675.00	100%	675.00
Walgreen Co. stock	1-15-34	3-20-34	2,378.30	1,912.50	465.80	100%	465.80
Berghoff Brewing Co. stock	5-13-33	4-25-34	407.26	350.00	57.26	100%	57.26
Chicago, Milwaukee & Gary Ry. bonds	2-1-34	5-4-34	3,598.00	3,400.00	198.00	100%	198.00
Holly Sugar Co. bonds	2-13-34	9-18-34	4,473.00	3,750.00	723.00	100%	723.00
Chicago, Terre Haute & S. E. Ry. bonds	5-4-34	6-15-34	3,360.50	3,778.55	(418.05)	100%	(418.05)
Chicago, Milwaukee St. P & P Ry bonds	9-1-33	12-11-34	689.18	2,411.65	(1,722.47)	80%	(1,377.98)
Northern Pacific Ry. bonds	6-13-34	12-6-34	3,482.00	3,487.50	(5.50)	100%	(5.50)
Marshall Field & Co. stock	9-20-33	12-28-34	1,020.76	1,750.00	(729.24)	80%	(583.39)
Standard Oil, Indiana, stock	6-3-33	12-28-34	2,457.00	3,002.50	(545.50)	80%	(436.40)
Texas Gulf Producing Co. stock	2-15-34	12-28-34	775.75	1,275.00	(500.25)	100%	(499.25)
United Gas & Improvement stock	6-8-33	12-28-34	1,180.27	2,125.00	(944.73)	80%	(755.78)
Supervised shares	9-23-33	12-29-34	2,924.88	3,706.00	(781.12)	80%	(620.10)
U. S. of America Discount bills	4-27-34	5-11-34	6,008.90	6,000.00	8.90	100%	
Grain trades	6-28-34	7-2-34	1,134.80	1,500.00	(365.20)		365.20
			<u>47,929.70</u>	<u>49,542.70</u>	<u>(1,613.00)</u>		<u>669.59</u>

## Trust Gains and Losses

Land Bryant, Inc. bonds	12-5-33	2-27-34	3,498.00	2,962.50	535.50	100%	535.50
Goodyear Tire & Rubber Co. bonds	12-21-33	3-12-34	4,753.50	4,412.50	373.00	100%	373.00
Fairbanks Morse & Co. bonds	9-22-33	5-4-34	1,753.75	1,165.00	588.75	100%	588.75
Fairbanks Morse & Co. bonds	9-22-33	5-7-34	881.80	582.50	299.30	100%	299.30
Fairbanks Morse & Co. bonds	9-22-33	5-8-34	1,753.75	1,165.00	588.75	100%	588.75
Marshall Field & Co. bonds	11-15-33	6-5-34	4,773.00	4,362.50	410.50	100%	410.50
Youngstown Sheet & Tube Co. bonds	9-22-33	6-15-34	4,123.00	2,994.76	1,128.24	100%	1,128.24
Home Owners Loan Corpn bonds	10-26-33	6-13-34	3,318.75	2,670.00	648.75	100%	348.75
Fuller Building bonds	9-22-33	6-13-34	834.20	730.00	104.20	100%	104.20
Larabee Building bonds	12-22-33	6-15-34	994.60	915.00	79.60	100%	79.60
Chicago Terre Haute & S. E. Ry. bonds	5-4-34	6-15-34	3,360.50	3,783.40	(422.90)	100%	(422.90)
			<u>29,776.85</u>	<u>25,223.16</u>	<u>4,553.69</u>		<u>4,903.69</u>
					<u>2,420.69</u>		<u>3,364.10</u>





1. Name and address of preparer (if any) and date of preparation of return. If preparer is a corporation, its name and address shall also be stated. If preparer is a partnership, its name and address shall also be stated. If preparer is an individual, his name and address shall also be stated. If preparer is a firm, its name and address shall also be stated. If preparer is a partnership, its name and address shall also be stated. If preparer is an individual, his name and address shall also be stated. If preparer is a firm, its name and address shall also be stated.

2. Name and address of taxpayer. If taxpayer is a corporation, its name and address shall also be stated. If taxpayer is a partnership, its name and address shall also be stated. If taxpayer is an individual, his name and address shall also be stated. If taxpayer is a firm, its name and address shall also be stated.

3. Name and address of preparer (if any) and date of preparation of return. If preparer is a corporation, its name and address shall also be stated. If preparer is a partnership, its name and address shall also be stated. If preparer is an individual, his name and address shall also be stated. If preparer is a firm, its name and address shall also be stated.

INCOME		DEDUCTIONS		COMPUTATION OF TAX	
1. Salary, Wage, Compensation, Fees, etc.		13. Interest Paid		21. Normal tax 14% of Item 20	None
2. Income (or Loss) from Business or Profession		14. Taxes Paid		22. Excess of Item 21 over Item 20	1 238 57
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc.	735 88	15. Losses by Fire, etc.		23. Total tax (Item 21 plus Item 22)	1 238 57
4. Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source	125 00	16. Bad Debts		24. Less: Income tax paid at source (Item 14)	5 50
5. Income (or Loss) from Partnerships, Syndicates, Pools, etc.		17. Contributions		25. Income tax (Item 23 minus Item 24)	1 233 07
6. Income (or Loss) from Dividends, etc.	600 00	18. Other Deductions Authorized by Law	Trust expenses 61 38	26. Excess of Item 25 over Item 24	1 233 07
7. Rents and Royalties	300 00	19. Total Deductions (Items 13 to 18)	635 21	27. Excess of Item 26 over Item 25	1 233 07
8. Capital Gain (or Loss)	375 66	20. Net Income (Item 12 minus Item 19)	20 235 12	28. Balance subject to normal tax	None
9. Taxable Interest on Liberty Bonds, etc.					
10. Dividends on Securities of Domestic Corporations subject to taxation under Title I of 1934 Act	11 647 80				
(b) Domestic Corporations not subject to taxation under Title I of 1934 Act					
(c) Foreign Corporations					
11. Other Income					
12. Total Income (Items 1 to 11)	20 235 12				

U. S. DEPARTMENT OF THE TREASURY  
DIVISION OF TAX APPEALS  
WASHINGTON, D. C.  
APR 15 1935

COMPUTATION OF TAX		COMPUTATION OF TAX	
21. Normal tax 14% of Item 20	None	21. Normal tax 14% of Item 20	None
22. Excess of Item 21 over Item 20	1 238 57	22. Excess of Item 21 over Item 20	1 238 57
23. Total tax (Item 21 plus Item 22)	1 238 57	23. Total tax (Item 21 plus Item 22)	1 238 57
24. Less: Income tax paid at source (Item 14)	5 50	24. Less: Income tax paid at source (Item 14)	5 50
25. Income tax (Item 23 minus Item 24)	1 233 07	25. Income tax (Item 23 minus Item 24)	1 233 07
26. Excess of Item 25 over Item 24	1 233 07	26. Excess of Item 25 over Item 24	1 233 07
27. Excess of Item 26 over Item 25	1 233 07	27. Excess of Item 26 over Item 25	1 233 07
28. Balance subject to normal tax	None	28. Balance subject to normal tax	None

I swear that the above is a true and correct statement of the income and deductions of the taxpayer for the year ended December 31, 1934, and that the same are true and correct to the best of my knowledge and belief.

Signature of preparer: *William F. Robinson, Inc.*  
Signature of taxpayer: *George B. Clifford, Jr.*

AFFIDAVIT (See Instruction 27)  
I swear that the above is a true and correct statement of the income and deductions of the taxpayer for the year ended December 31, 1934, and that the same are true and correct to the best of my knowledge and belief.

Signature of preparer: *William F. Robinson, Inc.*  
Signature of taxpayer: *George B. Clifford, Jr.*

PETITIONER'S AND RESPONDENT'S EXHIBIT E-5



# SCHEDULE A - INCOME OR LOSS FROM BUSINESS OR PROFESSION (See Instructions)

1. Total receipts from business or profession, state kind of business (Cost of Goods Sold)	2. Labor	3. Material and supplies	4. Merchandise bought for sale	5. Other costs (itemize below or on separate sheet)	6. Plus inventory at beginning of year	7. Total (Lines 2 to 6)	8. Less inventory at end of year	9. Net Cost of Goods Sold (Line 7 minus Line 8)	10. Other business deductions (Salaries not included in Labor on Line 2 do not deduct compensation for your services)	11. Interest on business indebtedness to others	12. Taxes on business and business property	13. Losses (explain in full at foot of page)	14. Bad debts arising from sales or services	15. Depreciation on business property (explain in full provided at foot of page)	16. Rent, repairs, and other expenses (itemize below or on separate sheet)	17. Total (Lines 10 to 16)	18. Total Deductions (Line 9 plus Line 17)	19. Net Profit (or Loss) (Line 1 minus Line 18) (Enter as Item 2)
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Enter "C", or "C or M", on Lines 5 and 8 to indicate whether in inventories are valued at cost, or cost or market, whichever is lower.

Explanation of deductions claimed on Lines 5 and 16

# SCHEDULE B - INCOME FROM RENTS AND ROYALTIES (See Instructions)

1. Kind of Property	2. Amount Received	3. Cost or Basis as of March 1, 1913 or as of date of acquisition	4. Depreciation (Explain in full at foot of page)	5. Other Deductions	6. Total Deductions	7. Net Income
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Explanation of deductions claimed in Column 6

# SCHEDULE C - CAPITAL GAINS AND LOSSES (See Instructions)

1. Description of Property	2. Date Acquired	3. Date Sold or Disposed	4. Amount Realized	5. Cost or Basis as of March 1, 1913 or as of date of acquisition	6. Cost or Basis as of date of sale or disposition (Explain in full at foot of page)	7. Depreciation Allowance (Explain in full at foot of page)	8. Gain or Loss	9. Taxable Gain or Loss	10. Capital Gain or Loss
Held 1 year or less	1-6-34	2-4-34	2,542.00	1,200.00			1,342.00	100	542.00
Held over 1 year but not over 2 years	9-23-32	11-20-34	1,988.00	1,116.00			872.00	80	44.00
Held over 2 years but not over 5 years								60	
Held over 5 years but not over 10 years								40	
Held over 10 years								30	
TOTAL GAINS AND LOSSES (Enter net gain or loss as Item 8) (Capital losses are allowable only to the extent of \$2,000 plus capital gains)									

1. If reporting sale or exchange of capital assets, attach separate schedule, if necessary, for transactions occurring within each of the 4 periods, and transfer gain and loss for each period to column 8 above.

2. If property must be entered in Column 1 if a loss is incurred in Column 8.

3. If a loss is incurred in Column 8, it must be reported in detail, including name and address of corporation, date of stock, number of shares, capital changes affecting basis (stock dividends, other distributions, etc.).

4. If personal or business relationship, if any, of purchaser.

# SCHEDULE D - INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instructions)

1. Description of Obligations	2. Amount Owed	3. Interest Received or Accrued	4. Principal Amount Received from Taxation	5. Amount Owed in Excess of Payment	6. Interest on Amount Owed in Excess of Payment (Enter as Item 2)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions					
(b) Obligations issued under Federal Farm Loan Act, or under such Act as amended					
(c) Liberty 3 1/2% Bonds and other obligations of United States issued on or before September 1, 1917					
(d) Treasury Notes, Treasury Bills, and Treasury Certificate of Indebtedness					
(e) Liberty 4 1/2% and 4 1/4% Bonds and Treasury Bonds					
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in (a) above)					

# SCHEDULE E - INCOME FROM DIVIDENDS

Itemize all dividends received during the year, stating amounts and names and addresses of corporations declaring the dividends.

# SCHEDULE F - EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 10, 17, AND 18

PETITIONER'S AND RESPONDENT'S

Explanation of deductions claimed in Column 6

**SCHEDULE C - CAPITAL GAINS AND LOSSES** (See Instruction 8)

1. DISPOSITION OF PROPERTY	2. DATE ACQUIRED	3. DATE REALIZED	4. AMOUNT REALIZED	5. COST OR MARKET VALUE OF PROPERTY AT DATE OF ACQUISITION	6. COST OR MARKET VALUE OF PROPERTY AT DATE OF DISPOSITION	7. INFORMATION ALLOWABLE UNDER SECTION 1223	8. GAIN OR LOSS	9. TAX STATUS	10. EXPLANATION OF DEDUCTIONS CLAIMED IN COLUMN 6
*Held 1 year or less	2-6-34	2-4-35	2,598.00	2,500.00			98.00	100	5.42.00
*Held over 1 year but not over 2 years	4-22-35	2-29-36	1,988.98	2,216.00				80	
*Held over 2 years but not over 5 years								60	
*Held over 5 years but not over 10 years								40	
*Held over 10 years								30	

**TOTAL GAINS AND LOSSES** (Enter net gain or loss as Item 8) (Capital losses are allowable only to the extent of \$2,000 plus capital gains)

8. **Net Gain or Loss** 5,42.00

9. **Net Capital Gain or Loss** 5,42.00

10. **Net Ordinary Gain or Loss** 0.00

**SCHEDULE D - INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES** (See Instruction 9)

1. OBLIGATION OR SECURITY	2. AMOUNT OWNED	3. INTEREST RECEIVED	4. PRINCIPAL AMOUNT RECEIVED	5. AMOUNT OWNED IN EXCESS OF EXEMPTION	6. INTEREST ON AMOUNT IN EXCESS OF EXEMPTION
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions			All		
(b) Obligations issued under Federal Farm Loan Act, or under such Act as amended			All		
(c) Liberty 3 1/2% Bonds and other obligations of United States issued on or before September 1, 1917			All		
(d) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness			All		
(e) Liberty 4% and 4 1/2% Bonds and Treasury Bonds			\$1,000		
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in (b) above)			None		

**SCHEDULE E - INCOME FROM DIVIDENDS**

List all dividends received during the year, stating amounts and names and addresses of corporations declaring the dividends

**SCHEDULE F - EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 14, 16, 17, AND 18**

**EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B**

1. Kind of Property (If buildings, state whether or not leased)	2. Date Acquired	3. Cost or Market Value at Date of Acquisition	4. Amount Fully Depreciated in Year of End of Year	5. Depreciation Allowed in Prior Years	6. Remaining Cost or Other Basis at End of Year	7. Depreciation Allowed in Year	8. Remaining Cost or Other Basis at End of Year	9. Depreciation Allowed in Year	10. Remaining Cost or Other Basis at End of Year

**EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A AND IN ITEM 15**

1. Kind of Property	2. Date Acquired	3. Cost	4. Depreciation Allowed in Prior Years	5. Depreciation Allowed in Year	6. Insurance and Salvage Value	7. Deductible Loss

PETITIONER'S AND RESPONDENT'S EXHIBIT E-5.

# PETITIONER'S AND RESPONDENT'S EXHIBIT E-5

Form 1096  
TREASURY DEPARTMENT  
INTERNAL REVENUE SERVICE

## INFORMATION RETURN FOR CALENDAR YEAR 1934

### INSTRUCTIONS TO PAYORS

Prepare one of these forms for each payee in accordance with the instructions on return Form 1096.

Forward with return Form 1096 to reach the Commissioner of Internal Revenue, Sorting Section, Washington, D. C., on or before February 15, 1935.

WHO PAID  
(Name and address)  
MISS VIRGINIA R. CLIFFORD  
C/O CREAM OF WHEAT CORP.  
738 STINSON BLVD  
MINNEAPOLIS, MINN.

KIND AND AMOUNT OF INCOME PAID

SALARIES, WAGES, FEES, COMMISSIONS, ETC. (If single \$1,000 or more, if married \$2,000 or more)	INTEREST ON NOTES, BONDS, AGES, ETC. (If single \$1,000 or more, if married \$2,500 or more)	RENTS AND ROYALTIES (If single \$1,000 or more, if married \$2,500 or more)	DIVIDENDS (\$100 or more)	FOREIGN ITEMS AND OTHER INCOME (If single \$1,000 or more, if married \$2,000 or more)
\$	\$	\$	\$ 11,750.00	\$

Check, if possible:  
☐ SINGLE  
☐ MARRIED

BY WHOM PAID  
(Name and address)  
Cream of Wheat Corp.

16-16490 U. S. GOVERNMENT PRINTING OFFICE 1934

Form 1090  
TREASURY DEPARTMENT  
INTERNAL REVENUE SERVICE  
Revised January, 1929

## OWNERSHIP CERTIFICATE

TO BE USED BY A CITIZEN OR RESIDENT INDIVIDUAL, FIDUCIARY, OR PARTNERSHIP  
IN CONNECTION WITH INTEREST IN BONDS OF A DOMESTIC OR RESIDENT CORPORATION CONTAINING A TAX-FREE COVENANT

DEBTOR CORPORATION		OWNER OF BONDS (Name must be legible)	
NAME		NAME	
ADDRESS		STREET	
CITY		CITY	
STATE		STATE	
DATE OF BOND		DATE OF BOND	
DATE INTEREST WAS DUE ON THE ABOVE BOND	3-1-34	DATE PAID	
I certify that to the best of my knowledge and belief the information entered hereon is correct.		<p>CLASSES OF BOND OWNERS ACCORDING TO NET INCOME</p> <p>1. Individual or fiduciary whose net income does not exceed the personal exemption and other credits</p> <p>2. Individual or fiduciary whose net income in excess of the personal exemption and other credits does not exceed \$1,000</p> <p>3. Individual or fiduciary whose net income in excess of the personal exemption and other credits exceeds \$1,000 or a partnership</p>	
<p>Signature of owner, trustee, or agent</p> <p>(Address of owner or agent)</p>		<p>AMOUNT OF INTEREST RECEIVED</p> <p>No tax paid by corp.</p> <p>Tax paid by corp.</p>	

NOTE: If you discover at the close of the year that the interest was not entered on the proper line above, you should prepare on or before February 1 of the following year an amended certificate on this form and forward it to the corporation which issued the bonds.

Form 1000  
TREASURY DEPARTMENT  
INTERNAL REVENUE SERVICE  
Revised January, 1929

PETITIONER'S

OWNERSHIP

TO BE USED BY A CITIZEN OR RESIDENT  
IN CONNECTION WITH INTEREST ON BONDS OF A DOMESTIC OR  
DEBTOR CORPORATION

Name *James E. Smith*

Address

NAME OF BOND

Date interest was due  
on the above bond

*2-1*  
Date paid

I certify that to the best of my knowledge and belief the information entered hereon  
is correct.

*James E. Smith*  
(Signature of owner, trustee, or agent)

*James E. Smith*  
(Address of trustee or agent)

(A fiduciary must disclose the name of the estate or trust for which he acts.)

Form 1000  
TREASURY DEPARTMENT  
INTERNAL REVENUE SERVICE  
Revised January, 1929

OWNERSHIP

TO BE USED BY A CITIZEN OR RESIDENT  
IN CONNECTION WITH INTEREST ON BONDS OF A DOMESTIC OR  
DEBTOR CORPORATION

Name *James E. Smith*

Address

NAME OF BOND

Date interest was due  
on the above bond

*3-1-34*  
Date paid

I certify that to the best of my knowledge and belief the information entered hereon  
is correct.

*James E. Smith*  
(Signature of owner, trustee, or agent)

*James E. Smith*  
(Address of trustee or agent)

(A fiduciary must disclose the name of the estate or trust for which he acts.)



**NOTE.**—If you discover at the close of the year that the interest was not entered on the proper line above, you should prepare on or before February 1 of the following year an amended return to correct the error.





## Before United States Board of Tax Appeals

[Title omitted.]

*Stipulation as to facts*

Filed at hearing June 20, 1938

It is hereby stipulated by and between George B. Clifford, Jr., the petitioner, and the Commissioner of Internal Revenue, through their respective counsel as follows with respect to testimony and facts in this case:

1

The petitioner in these proceedings is George B. Clifford, Jr. Virginia Clifford, referred to herein, is now and during the year 1934 was the wife of the petitioner. They now reside and in 1934 did reside at 2601 East Lake of Isles Boulevard in the City of Minneapolis, Minnesota.

2

The petitioner on June 20, 1934, executed the Declaration of Trust, a copy of which is hereto attached, marked "Exhibit A" and hereby made a part hereof. Virginia Clifford executed an acknowledgment of notice of the trust on June 20, 1934. This trust is referred to in the statement attached to deficiency notice as "Trust #2."

3

The petitioner filed his individual income-tax return for the year 1934. The petitioner also filed a fiduciary return and a separate tax return for the trust under said Declaration of Trust for the period from June 20, 1934, to December 31, 1934. Virginia Clifford filed her individual income-tax return for the year 1934. All of said returns were filed with the Collector of Internal Revenue at St. Paul, Minnesota.

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4

The fiduciary return of said trust showed a net income of \$9,764.13; this return showed the capital gain therefrom, or \$1,310.20, as distributed to and chargeable to the trust; and showed the balance of net income therefrom, or \$8,453.93, as distributed to and chargeable to Virginia Clifford. The tax return filed on behalf of the trust included the item of \$1,310.20 and tax upon this amount after deducting personal exemption of \$1,000 was paid by the trust. The net income of the trust from sources other than capital gains were included in the individual return of Virginia Clifford for the year 1934. The petitioner did not include any income of the said trust in his return for the year 1934.

5

The Commissioner on February 15, 1937, mailed to the petitioner notice of deficiency with reference to petitioner's income-tax liability

for the year 1934, a copy of said notice being attached to the petition herein. The notice proposes a deficiency of \$2,909.41. The amount in dispute as alleged in the petition herein is \$2,756.62.

6

The statement attached to notice refers to certain adjustments to which the petitioner does not object in his petition. The nature of these adjustments will appear from the following facts. Reference has already been made in this stipulation to the following returns: (1) George B. Clifford, Jr., individual return; (2) Virginia Clifford individual return; (3) George B. Clifford, Jr., Trust fiduciary return covering period from June 20, 1934, to December 31, 1934, as to trust under Declaration of Trust, dated June 20, 1934; (4) George B. Clifford, Jr., Trust tax return covering period from June 20, 1934, to December 31, 1934, as to the same trust under Declaration of Trust, dated June 20, 1934. This trust as previously stated is referred to in the deficiency notice of February 15, 1937, as "Trust #2."

7

In addition to the foregoing returns, the petitioner, George B. Clifford, Jr., as trustee, filed with Collector of Internal Revenue at St. Paul, Minnesota, in March 1935, a fiduciary return for the period from January 1, 1934, to June 19, 1934, as to the income of a trust created by a Declaration of Trust, dated September 22, 1933. This trust is referred to in the deficiency notice as "Trust #1." This trust was terminated by mutual agreement between George B. Clifford, Jr., as trustee, and Virginia Clifford, as sole beneficiary, on June 20, 1934. The petitioner had included in his individual return as filed the total income and deductions shown by the fiduciary return of said Trust #1. The difference between the income, as shown in said statement, from Trust #1 under "5. Fiduciary" as interest, \$1,311.32, Home Owners Loan Corporation interest, \$114.00, Dividends, \$8,000.00, and Capital gains, \$3,787.20 (being the total sum of \$13,212.52); and the income from said trust included in the petitioner's individual return and shown in said statement as "Trust Income reported, \$13,345.01" results from adjustments in said income by the examining agent, to which adjustments the petitioner has made no objection. It is agreed between the parties hereto that there is no controversy as to amount or allocation of income of this trust.

8

The petitioner objects to the inclusion in his income for the year 1934 of any part of the income of trust under the Declaration of Trust, dated June 20, 1934. No objection is made to the adjustments in income and deductions in the return of said trust. It is agreed between the

34

wish  
and

parties hereto that the following statement correctly reflects the income of said trust:

Interest	480.45	
Interest tax free covenant bonds	500.00	
Capital Gain	1,180.96	
Dividends	8,000.00	
Total income		\$10,141.41
Taxes paid		18
Other deductions		30.00
Total deductions		30.18
Net income		\$10,111.23

It is agreed between the parties hereto that if called to testify, George B. Clifford, Jr., and Virginia Clifford would testify substantially as hereafter set forth:

That during the year 1934, Virginia Clifford had substantial means of her own. That her stocks, bonds, and other securities during said year had a value in excess of \$150,000. That her income from her investments was approximately \$12,783.83.

That over a period of many years, commencing in 1924 or prior thereto, down to and including the present year 1938, the petitioner has made transfers of substantial sums in stocks and bonds directly to Mrs. Clifford and their three children. That the petitioner has intended by said gifts to give security and economic independence to his wife and children. That tax effects of such gifts were considered by the petitioner, but that such tax effects were not the sole consideration in making said gifts. That the creation of the trust of June 20, 1934, was part of this general purpose. That petitioner on or about March 15, 1935, filed with the Collector of Internal Revenue at St. Paul, Minnesota, Gift Tax return for the calendar year 1934, and paid gift tax shown to be payable by said return. That said return included the value as of date of gift of said trust of Virginia Clifford.

That the petitioner, George B. Clifford, Jr., has at all times from and after June 20, 1934 held the securities listed in the schedule attached to the said Declaration of Trust, dated June 20, 1934, and the proceeds from any sale thereof and all investments of the said proceeds in trust pursuant to the terms of said Declaration of Trust. That he has, as trustee of said trust, distributed any income therefrom only to Virginia Clifford, as beneficiary thereof, except minor amounts disbursed for taxes or expenses of the trust itself.

That there were no additions, restrictions, or supplemental understandings modifying the terms of said Declaration of Trust of June 20, 1934. That Virginia Clifford has at all times been free to use the income of said trust for any purpose she might wish. That there was not at the time of the creation of said trust and there never has been any agreement between the petitioner and

Virginia Clifford as to the use of the income from said trust or in direction or instruction by the petitioner as to the use thereof.

That the petitioner has since the date of said trust maintained separate bank account as Trustee; that he has placed in said account income and cash of said trust. That Virginia Clifford has for many years prior to the date of said trust and continuously to the present maintained a separate personal bank account in her own name; that she is the only person who could or did draw checks on said account at any time during 1934 to the present date. That Virginia Clifford at all times deposited in her said bank account income from her own stocks, bonds, and other securities. That George B. Clifford, Jr. as trustee, has at all times issued checks against the said trust account to Virginia Clifford for the income of said trust, and said checks have at all times been deposited in Virginia Clifford's said personal bank account, larger items of income have been checked out of the trust account in this manner soon after receipt by trustee, small items have been permitted to accumulate for short periods in trustee's account before transfer to Virginia Clifford's personal account. That the income of said trust, when received by Mrs. Clifford, was deposited in and intermingled in the same account with income from all securities owned by Mrs. Clifford. That no record has been kept of the use or expenditure by Mrs. Clifford of the funds so deposited in Mrs. Clifford's personal bank account during the year 1934. That Mrs. Clifford paid from said account the monthly allowance of \$133. to her mother and others gifts to her mother and other relatives, purchases of clothing for herself and her children, personal jewelry, antiques, and other art objects, and personal travel. That she also paid from said account certain so-called household bills or accounts as women servants, cleaning bills, and supplies.

That the petitioner and Mrs. Clifford did not intend or contemplate that the petitioner should be relieved or discharged from the liability for the payment of any household or family expenses by said trust. That the petitioner, after execution of said trust, paid large sums for so-called household or family expenses out of his own personal funds.

That the petitioner has not, subsequent to the creation of said trust withdrawn or used for his own purpose any part of the principal or income of said trust and that he has not exercised any power with respect thereto which is not authorized by the terms of said Declaration of Trust.

Dated this 20th day of June, 1938.

THOMAS P. HELMEY,

STINCHFIELD, MACKALL,

CROUNSE, McNALLY & MOORE,

*Attorneys for Petitioner.*

J. P. WENCHEL,

*Attorney for Commissioner of*

*Internal Revenue.*

Per W. FRANK GIBBS.



*Exhibit A to stipulation*

## DECLARATION OF TRUST

I, George Barnard Clifford, Jr., of Minneapolis, Minnesota, being the owner and holder of all the bonds, debentures, notes, certificates, or other securities referred to in the attached Exhibit A, do hereby acknowledge and declare that I do and will hold all of the same and all my right, title, and interest therein as a trust estate in trust for the uses and purposes and upon the terms and conditions following:

1. All the net income from the trust estate received during the continuance of the trust hereby created and remaining after payment of or due allowance for all expenses of holding, managing, or administering the same, including any taxes that I as trustee thereof may be obliged or may elect to pay, shall be held for the exclusive benefit of Virginia R. Clifford (for convenience hereinafter sometimes referred to as the life beneficiary).

36 2. The trust hereby created shall continue for a term of five (5) years from the date of this Declaration of Trust unless the life beneficiary or myself shall die during said term, and at the expiration of said term or upon the earlier death of the life beneficiary or myself during said term, whichever event shall first occur, the trust hereby created shall forthwith and without any further act or deed terminate.

3. During the continuance of this trust, I, as trustee, may pay and distribute to the life beneficiary, quarterly or at such other times as I may deem convenient during any calendar year, the whole or such part of the net income of said trust as I, as trustee, may in my absolute discretion determine. Upon the termination of the trust, at the expiration of the term of this trust or upon the earlier death of the life beneficiary or myself as provided in paragraph numbered 2. above, any and all accrued or undistributed net income from the trust estate and any proceeds from the investment of such net income in my hands as trustee shall be deemed and treated as property owned absolutely by Virginia R. Clifford as of the time of the termination of the trust, and the remainder of the trust estate, including the entire principal or corpus thereof, shall be deemed and treated as property owned absolutely by me as of the same time.

4. During the continuance of the trust hereby created I shall have full power and authority to do the following things: (a) To exercise, or to appoint proxies to exercise, any and all voting powers under any certificates or shares of stock in the trust estate; (b) to retain, or to sell, exchange, mortgage, or pledge any certificates, shares of stock, securities or other items of property, or any fractional interest in any of the same now or hereafter in the trust estate, whether as part of the corpus or principal thereof or as investments or proceeds and any income therefrom, upon such terms and for such consideration as I in my absolute discretion may deem fitting; (c) to invest any cash or money in the trust estate or any income therefrom

same in any bank, trust company or other similar institution, or by purchasing secured or unsecured notes or certificates of deposit, or by purchasing any bonds, stocks, securities, or other personal property of any description, without restriction because of the speculative character of the investment or the rate of return therefrom or any laws pertaining to the investment of trust funds; (d) to collect, receive, and hold all dividends, interest, increment, and income belonging or due to the trust estate; (e) to compromise, settle, or adjust or release any claims which I may hold as trustee; (f) to hold any securities or items of property or any fractional interest therein, which may be in the trust estate, in the names of other persons or in my own name as an individual except as in this agreement otherwise provided.

5. Extraordinary cash dividends, any dividends paid in stock, or the proceeds received from sale of any subscription rights not exercised, or any enhancement, realized or not, in the value of securities shall be considered and treated as principal and not income. All premiums on investments shall be charged and all discounts on investments shall be credited against or to principal as the case may be.

6. I shall not individually or as trustee be liable or responsible to the life beneficiary for any loss of any kind except in consequence of my own wilful and deliberate violation of my duties as trustee herein particularly specified.

7. Except as otherwise herein provided specifically to the contrary, no title in or to the trust estate or any income therefrom shall vest in the life beneficiary, and neither the principal nor any future or accrued or undistributed income shall be liable or in any manner chargeable for the debts of the life beneficiary, and the life beneficiary shall have no power to sell, transfer, encumber, or in any manner anticipate or dispose of any interest in the trust estate or any income therefrom prior to actual payment or delivery thereof to the life beneficiary.

In Witness Whereof I have hereto set my hand this 20 day of June 1934.

GEO. B. CLIFFORD, JR.

Signed in the Presence of;

GEO. E. GARLOUGH.

GRACE J. MOE.

38 STATE OF MINNESOTA.

*County of Hennepin, ss:*

On this 20 day of June 1934, before me, a notary public within and for said County, personally appeared George Barnard Clifford, Jr., to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[NOTARIAL SEAL]

J. V. HEGERLE.

*Notary Public, Hennepin County, Minn.*

My Commission Expires Jan. 8th, 1939.

Virginia R. Clifford, the beneficiary named in the foregoing instrument, hereby acknowledge notice of the execution thereof and of a true copy thereof.  
 dated June 20, 1934:

VIRGINIA R. CLIFFORD.

*Exhibit A to declaration of trust*

Security	Rate	Maturity	Par value
Telephone Co. of Canada, 1st Mtge	5	1957	\$5,000.00
Atlantic Railway, 1st Mtge	4	1955	\$1,000
on & Manhattan, 1 Lien & Ref	5	1957	\$5,000.00
as City Southern, 1st Mtge	3	1950	5,000.00
Virginia & Pittsburgh, 1st Mtge	4	1950	5,000.00
ern Maryland, 1st Mtge	4	1952	5,000.00
ewa Power Co., 1st Mtge	6	1947	5,000.00
nal Steel Corp., 1st Coll S. F.	6	1956	5,000.00
American Car Corp., Eq. Tr	5	1942	5,000.00
Diego Water Supply Co.	5	1955	2,000.00
gfield Gas & Electric Co.	5	1957	2,000.00
Western Natl. Bank—Checking Account			1,285.79
n of Wheat Corporation:			
Trustees Voting Trust Certificates (8), Common Stock shares			8,000
Subject to the following indebtedness—			
ge Barnard Clifford, Jr.			\$52.50
nia R. Clifford			4,186.00

of the foregoing securities were set aside pursuant to the foregoing Declaration of Trust on the date of the execution thereof, a list of securities by error not having been attached. This list of securities was attached hereto as of June 20, 1934, this 11 day of February 1935.

VIRGINIA CLIFFORD.  
 BARNARD CLIFFORD.

Before United States Board of Tax Appeals

*Præcipe for transcript*

Filed January 16, 1939

*the Clerk of the United States Board of Tax Appeals:*

You are requested by the Petitioner in the above-entitled cause to make a transcript of record therein to be filed in the United States Circuit Court of Appeals for the Eighth Circuit, pursuant to review in said cause, and to include in such transcript of record copy duly certified as correct, of the following documents:

Docket entries of proceedings before the Board.

Pleadings before the Board, as follows:

1) Petition with Exhibits attached thereto.

2) Answer of the Respondent.

Memorandum Opinion of the Board promulgated September 26, including findings of facts therein.

4. Decision entered September 27, 1938.
5. Motion for Review by Full Board and, if that be not Granted, for Reconsideration.
6. Order Denying Review by the Full Board and Reconsideration entered October 25, 1938.
7. Petition for Review with Notice of Filing, and Proof of Service of Notice and copy of Petition.
8. Statement of Evidence, including stipulation as to facts, and Exhibits A-1, B-2, C-3, D-4, and E-5, as settled and allowed.
9. This Praecipe.

The foregoing to be prepared, certified, and transmitted as required by law and the rules of the United States Circuit Court of Appeals for the Eighth Circuit.

THOMAS P. HELMEY,  
*Attorney for Petitioner,*  
*1140 First National-Soo Line Building,*  
*Minneapolis, Minnesota.*

- 68 Received a copy of the foregoing Praecipe, which is hereby agreed to this 16th day of January 1939.

J. P. WENCHEL,  
*Chief Counsel, Bureau of Internal Revenue,*  
*Attorney for Respondent.*

[Clerk's certificate to foregoing transcript omitted in printing.]

- 69 [Appearances of counsel omitted in printing.]

- 71 In United States Circuit Court of Appeals, Eighth Circuit

*Order of submission*

May 23, 1939

This cause having been called for hearing in its regular order, argument was commenced by Mr. Thomas P. Helmey for petitioner, continued by Mr. S. Dee Hanson, Special Assistant to the Attorney General, for respondent, and concluded by Mr. Frederick H. Stinchfield for petitioner.

Thereupon, this cause was submitted to the Court on the transcript of the record from said Board of Tax Appeals and the briefs of counsel filed herein.

In United States Circuit Court of Appeals, Eighth  
Circuit

No. 11431—May Term, A. D. 1939

GEORGE B. CLIFFORD, JR., PETITIONER

vs.

T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Petition-To Review Decision of United States Board of Tax  
Appealsre GARDNER and THOMAS, Circuit Judges, and WYMAN, District  
Judger. Thomas P. Helmev and Mr. F. H. Stinchfield (Messrs. Stinch-  
Mackall, Crounse, McNally & Moore and Mr. William W. Wat-  
were with them on the brief) for petitioner.r. S. Dee Hanson, Special Assistant to the Attorney General (Mr.  
all Key, Special Assistant to the Attorney General, and Mr. Mac  
ll, Special Assistant to the Attorney General, were on the brief)  
respondent.*Opinion*

July 19, 1939

GARDNER, Circuit Judge, delivered the opinion of the court:

This is a petition to review a decision of the Board of Tax Ap-  
peals which sustained a redetermination by the Commissioner of in-  
dividual income tax liability of petitioner, George B. Clifford, Jr.,  
for 1934. The facts were stipulated, and, hence, are not in  
dispute. So far as here material, they are substantially as  
follows:On June 20, 1934, petitioner executed a declaration of trust by  
which he acknowledged that he held certain securities as a trust-  
ee, in trust for the uses and purposes and upon the terms and  
conditions set out in the trust instrument; that all the net income  
derived from the estate during the continuance of the trust so de-  
termined, after payment of all necessary expenses of holding, managing,  
administering the estate, including taxes that the trustee might be  
legally required to pay, should be held for the exclusive benefit of Virginia R.  
Clifford, petitioner's wife, for a period of five years from the date



of the declaration of trust, unless the beneficiary or the settlor should die during that term. At the expiration of the term, or upon the earlier death of the beneficiary or the settlor, the trust should terminate; that the settlor as trustee might pay and distribute to the beneficiary quarterly, or at such other times as he might deem convenient during any calendar year, the whole or any part of the net income as he might in his discretion determine. At the termination of the trust, any and all accrued or undistributed net income, and any proceeds from the investment of such net income, should be deemed and treated as property owned absolutely by Virginia R. Clifford, the beneficiary, as of the time of the termination of the trust, and the remainder of the trust estate should be deemed and treated as property owned by the settlor; that the trustee should have full power and authority to do the following things: "(a) To exercise, or to appoint proxies to exercise, any and all voting powers under any certificates or shares of stock in the trust estate; (b) to retain, or to sell, exchange, mortgage, or pledge any certificates, shares of stock, securities, or other items of property or any fractional interest in any of the same now or hereafter in the trust estate, whether as part of the corpus or principal thereof or as investments or proceeds and any income therefrom, upon such terms and for such consideration as I in my absolute discretion may deem fitting; (c) to invest any cash or money in the trust estate or any income therefrom by lending the same with or without security or by depositing the same in any bank, trust company, or other similar institution, or by purchasing secured or unsecured notes or certificates of deposit or by purchasing any bonds, stocks, securities, or other personal property of any description, without restriction because of the speculative character of the investment or the rate of return therefrom or any laws pertaining to the investment of trust funds; (d) to collect, receive, and hold all dividends, interest, increment, and income belonging or due to the trust estate; (e) to compromise, settle, or adjust or release any claims which I may hold as trustee; (f) to hold any securities or items of property or any fractional interest therein, which may be in the trust estate, in the names of other persons or in my own name as an individual except as in this agreement otherwise provided."

74 Since June 20, 1934, the date of the declaration of trust, petitioner has maintained a separate bank account as trustee, in which he has placed income and cash of the trust. He has, as trustee, issued checks against the trust account to his wife, which have been deposited in the personal bank account of his wife, Virginia R. Clifford. The income of the trust, when received by Mrs. Clifford, was deposited in and intermingled in the same account with income from other securities owned by her, and no separate record was kept by her of the use of the trust income. Since June 20, 1934, petitioner has not withdrawn nor used for his own property any part of the principal or income of the trust, but all of the net income received by him, amount-

ing to \$8,453.93, has been distributed to the beneficiary, Virginia R. Clifford, and was included in the income tax returns filed by her for the year. The petitioner filed his income tax return for the year 1934, but did not include any return from the trust. The Commissioner increased the petitioner's taxable income for the year 1934 by the amount of \$10,111.23 the gross income of the trust, and upon review the Board of Tax Appeals affirmed the action of the Commissioner.

Respondent admits that in form at least, a trust was created, but contends that for tax purposes the trust should be denied effect because (1) the petitioner possessed the "rights of possession, control, and ultimate enjoyment;" (2) the trust instrument was but an assignment of future income from property retained by petitioner; and (3) the income was taxable under Section 100 of the 1934 Revenue Act.

That an owner of property may declare himself trustee of his property is now well settled. *St. Louis Union Trust Co. v. Becker*, (CCA8) 73 F. (2d) 851; *Becker v. St. Louis Union Trust Co.*,

296 U. S. 48; *Morsman v. Commissioner*, 90 F. (2d) 18. Thus, in *Becker v. St. Louis Union Trust Company*, supra, the court

aid:

"By the declaration of trust here under review, the legal title, possession, and control of the trust estate passed irrevocably from the grantor as an individual to himself as trustee. The effect is no different than if the trustee had been another person."

It is, however, contended by respondent that the trust instrument retained or conferred upon the petitioner as trustee such rights of possession, control, and ultimate enjoyment as to render the trust invalid. We have already set forth the provision in the trust instrument which granted petitioner specific powers with reference to the trust estate, but we think these provisions are not broader than those retained by us in *St. Louis Union Trust Company v. Becker*, supra, which was affirmed by the Supreme Court in *Becker v. St. Louis Union Trust Company*, supra. In that case the settlor declared himself trustee of certain securities for the benefit of a third party and gave the trustee power to sell trust property and to exchange shares of stock and securities in the trust estate upon such terms and for such consideration as the trustee in his absolute discretion might deem fitting. In that case, as in the instant case, the income from the trust property was no longer that of the settlor. That was irrevocably signed. In the instant case the trust is limited in time, and at the end of five years the corpus of the estate reverts to the petitioner.

In *Willcuts v. Douglas* (CCA8), 73 F. (2d) 130, the Commissioner contended that the trust was invalid and that the settlor was taxable on the income arising therefrom because by its terms the trust estate was to revert to the creator. In answer to this contention, in an opinion by Judge Stone, we said:

"One contention of the Commissioner is that the entire income from this trust is taxable to the creator thereof because, under its terms, the trust estate is to revert to the creator after it has served

the purpose of its creation and also the creator is entitled to the surplus annual income of the trust above the required payments to the wife. We do not see why either or both of these provisions should, of themselves, have such result; however, they may bear upon the main contention in this appeal, hereafter to be examined.

"The bald fact that, after an irrevocable trust has served its purpose, the trust estate is to revert to the creator, does not, without more, make the income during the trust period that of the creator for tax or any purposes. The statute is aimed at taxation of income."

Trusts created for a definite period of years are valid though at the time specified the trust ceases and the powers and office of the trustee terminate. If the beneficiary under the terms of the trust receives the income, he must pay the tax thereon. *Blair v. Commissioner*, 300 U. S. 5. Here the trust vested absolutely in the beneficiary the income for a period of five years. This was an irrevocable provision of the trust. True, the trustee was given a discretion as to time and amount of payment; but if any of the income remained in his possession at the end of the five-year period, when the trust by its terms terminated, it was to go to the beneficiary absolutely. Where, in contemplation of law, the income remains in substance that of the grantor, the trust is, of course, ineffectual. *Douglas v. Willcuts*, 296 U. S. 1.

While the powers vested in the trustee with reference to the sale and investment of property are broad, they do not, we think, defeat the trust. Express power to sell all or any part of the trust property, to invest and reinvest the proceeds by purchase, exchange or loans, are commonplace in the field of trusts. *Bogert, Trusts and Trustees*, Secs. 611 and 741. Trustees may be given express power to borrow and for that purpose to hypothecate a trust estate. *Bogert*, Sec. 751. The powers with reference to the management and investment of the trust estate are not, we think, such as to extinguish the trust or will or otherwise defeat it. *St. Louis Union Trust Co. v. Becker*, supra; *Corliss v. Bowers*, 281 U. S. 376; *Commissioner v. Waterbury* (CCA2), 97 F. (2d) 383.

The rule announced in *Lucas v. Earl*, 281 U. S. 111, and *Burnet v. Leininger*, 285 U. S. 136, to the effect that the actual earner or recipient of income cannot by assignment avoid the statutory liability is not pertinent, because as owner of the beneficial interest, the beneficiary here is entitled to the income therefrom and is in turn taxed on that income by the statute. As said in *Blair v. Commissioner*, supra.

"These cases are not in point. The tax here is not upon earnings which are taxed to the one who earns them. Nor is it a case of income attributable to a taxpayer by reason of the application of the income to the discharge of his obligation. \* \* \* There is here no question of evasion or of giving effect to statutory provisions designed to forestall evasion; or of the taxpayer's retention of control. \* \* \* In the instant case, the tax is upon income as to which, in the general application of the revenue acts, the tax liability attaches to ownership."

Reserving power of control over the trust property does not invest the trustor with control over economic benefits, and this distinction must be recognized. *Commissioner v. Waterbury*, supra. It is conceded by respondent that such control over the corpus and income are given to petitioner as trustee as to make him in effect the absolute owner. The control of the corpus was vested in the grantor as trustee and not as an individual. Distributions of income to the beneficiary are in the discretion of the trustee to be made quarterly or at such other times as the trustee should determine; but upon termination of the trust, as we have already observed, all income was to be deemed and treated as property owned absolutely by the beneficiary and the corpus of the trust was to be deemed and treated as property owned by the grantor. It is clear that the income belonged to the beneficiary regardless of the time of actual payment to her. If not paid to her during the five-year period, any part remaining was nevertheless her absolute property. In this respect the grantor definitely fixed the time of payment and put the question of ownership of income beyond doubt and likewise beyond his control. It was not to accumulate capital.

Was the petitioner taxable on the income of the trust because of Section 166 of the Revenue Act of 1934? This provision reads as follows:

"Where at any time the power to revest in the grantor title to any part of the corpus of the trust is vested—

- (1) in the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, or
- (2) in any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, then the income of such part of the trust shall be included in computing the income of the grantor."

This question was not passed upon by the Board of Tax Appeals, but it may nevertheless properly be urged here. *Helvering v. Gowran*, 302 U. S. 238; *Helvering v. Rankin*, 295 U. S. 123; *Dickey v. Burnet* (CCA2), 56 F. (2d) 917.

Prior to 1934, the law provided for taxation of trust income to the grantor where he reserved power to revoke the trust at any time during the taxable year. Revenue Act of 1932; Revenue Act of 1928, Sec. 219; Revenue Act of 1926, Sec. 219 (g). The construction placed upon these provisions was that they placed upon the grantor of the trust a liability to taxation on trust income only when revocation might be accomplished during the taxable year. If the trust could not be revoked within the year, the statute did not apply and the income was taxable to the trust grantor. *Langley v. Commissioner* (CCA2), 56 F. (2d) 796; *Commissioner v. Grosvenor* (CCA2), 85 F. (2d) 2; *Wright v. White* (D. C.), 56 F. (2d) 390. In Section 166 of the 1934 Act, the words relating to revocation during the taxable year were omitted.



The grantor in the instant case was given no power of revocation or reversion. The trust was absolute for the period of five years, except that it might terminate sooner by events beyond the control of the petitioner. Generally, a power of revocation is the reservation of a power in the grantor to put an end to the estate granted. *Tiffany, Real Property*, 2nd Ed. p. 1049. In this Section 166, the word "revest," clearly means the power reserved to the grantor to terminate a granted estate. *United States v. First Natl. Bank of Birmingham (CCA5)*, 74 F. (2d) 360. An existing right in property is not a power, but power is the right, ability or faculty of doing something. *Bouvier's Law Dictionary*, p. 2646. Here, manifestly, petitioner had no power to divest nor abridge the existing estate, and hence, the trust income is not affected by Section 166, supra.

It is urged that administrative construction has been reinforced by subsequent legislation. Treasury Regulations adopted under the 1934 Act prescribed rules for determining whether income of a trust was taxable to the grantor, and in doing so gave as an example a trust for three years, at the end of which time it might be extended for a like period at the option of the grantor and successively thereafter, but in the absence of such an extension the title is once more to revert to the grantor in possession and enjoyment. (Treas. Regulations 79 86, Art. 166-1.) Subsequent to the adoption of the regulation, the Revenue Acts of 1936 and 1938 reenacted Section 166 without change.

We think there is no basis for the contention of legislative approval. The regulation is in direct conflict with the plain language and the meaning of the statute. A plainly erroneous departmental construction does not become correct by any subsequent reenactment of the provision of the statute to which it pertains. *United States v. Missouri Pacific Railroad Co.*, 278 U.S. 269. Neither does it appear that there is uniformity in the construction. In 1934, a subcommittee of the House Ways and Means Committee made a report on the proposed revenue bill and suggested certain recommendations. (C. C. H. Standard Tax Service, 1934, III pp. 6673, 6697, 6707.) Among them was the following:

"(6) The income from short-term trusts and trusts which are revocable by the creator at the expiration of a short period after notice by him should be made taxable to the creator of the trust."

In the 1934 Revenue Bill, however, the House made no change in Section 166 as it appeared in the Revenue Act of 1932. The Senate amendment omitted the provision with reference to notice. The Conference Committee adopted the Senate amendment. Where construction is not uniform, it cannot be given effect. *United States v. Missouri Pacific Railroad Co.*, supra; *Iselin v. United States*, 270 U.S. 245. It appears that the Treasury Department not only considered legislation as necessary to tax the income of a trust for a term of years, but it likewise appears that Congress refused to adopt the suggestion. Respondent's contention that the provision for termination of the



state by passage of time or death was a power to revert to petitioner, not sustained by reason or authority, and we cannot so hold.

The decision of the Board of Tax Appeals is therefore reversed and the cause is remanded to the Board of Tax Appeals for further proceedings consistent herewith.

In United States Circuit Court of Appeals, Eighth Circuit

No. 11431

GEORGE B. CLIFFORD, JR., PETITIONER

vs.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

*Decree*

July 24, 1939

On Petition to Review Decision of United States Board of Tax Appeals

This cause came on to be heard on the petition to review a decision of the United States Board of Tax Appeals which sustained a determination by the Commissioner of individual income tax liability of the petitioner, George B. Clifford, Jr., for the year 1934, and was argued by counsel.

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court that the decision of the said Board of Tax Appeals in this cause be, and the same is hereby, reversed without the taxation of costs to either party in this Court.

And it is further ordered by this Court that this cause be, and the same is hereby, remanded to the said Board of Tax Appeals for further proceedings consistent with the opinion of this Court filed herein

July 19, 1939.

[Clerk's certificate to foregoing transcript omitted in printing.]

Supreme Court of the United States

*Order allowing certiorari*

Filed November 6, 1939


The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.

[Endorsement on cover:] File No. 43790. U. S. Circuit Court of Appeals, Eighth Circuit. Term No. 383. Guy T. Helvering, Commissioner of Internal Revenue, Petitioner, vs. George B. Clifford, Jr. Petition for a Writ of Certiorari and Exhibit Thereto. Filed September 13, 1939. Term No. 383 O. T. 1939.

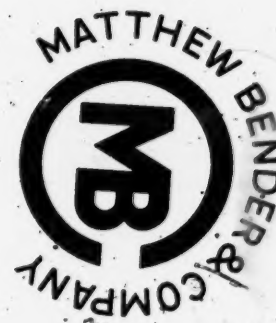
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